

Anita & Adrian Benavides, Plaintiffs, v. Sun Loan Partnership #3, LTD d/b/a Sun Loan Company; Brundage Management Company, Inc; Thomas Brundage; Sun Loan Company, Inc, and Hugh Doherty Defendants.	IN THE DISTRICT COURT OF 79th DISTRICT COURT JIM WELLS COUNTY, TEXAS
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PLAINTIFFS THIRD AMENDED COMPLAINT

I. INTRODUCTION

A. Jurisdiction & Discovery Level

1. Venue is proper in this District because the acts and transactions occurred here, Plaintiffs resides here, and Defendants transacts business here. This matter is controlled by Level 3 Discovery.

B. Parties

2. Plaintiffs, Anita & Adrian Benavides (hereinafter collectively "Plaintiffs"), are natural persons who reside in the City of Alice, County of Jim Wells, State of Texas and are a "consumer" as that term is defined by Texas Finance Code and the Texas Deceptive Trade Practices Act and are 'persons' as defined 18 USC §1961 *et seq* ("RICO").

3. Defendant Sun Loan Partnership #3, LTD d/b/a Sun Loan Company ("Sun Loan Alice") is a domestic corporation whose local office is located in the State of Texas and who has agreed to waive service and accept service by and through their counsel, Barton,

East & Caldwell PLLC, G Wade Caldwell, 700 N St Mary's St #1825, San Antonio, TX 78205.

4. Defendant Brundage Management Company Inc, ("BMC") is a domestic corporation whose local office is located in the State of Texas and may be served with process through their counsel, Barton, East & Caldwell PLLC, G Wade Caldwell, 700 N St Mary's St #1825, San Antonio, TX 78205.

5. Defendant, Thomas Brundage ("Brundage") is an individual and may be served with process through his counsel, Barton, East & Caldwell PLLC, G Wade Caldwell, 700 N St Mary's St #1825, San Antonio, TX 78205.

6. Defendant Sun Loan Company, Inc ("Sun Loan Inc") is a domestic corporation whose local office is located in the State of Texas and may be served with process through by their registered agent for service, Thomas O Brundage, 254 Spencer Ln, San Antonio, TX 78201.

7. Defendant Hugh Doherty ("Doherty") is an individual and may be served with process through his counsel, Barton, East & Caldwell PLLC, G Wade Caldwell, 700 N St Mary's St #1825, San Antonio, TX 78205.

8. Defendant Sun Loan Alice is in the business of extending consumer credit and collecting consumer debts in Texas. They are an "authorized lender" under Texas Finance Code 342.000 *et seq* and a "creditor" that is licensed by the Texas Office of Consumer Credit Commissioner ("OCCC") and as such they are required to fully comply with Chapter 83 of the Texas Administrative Code.

9. All Defendants are “debt collectors” as defined by TDCPA §392.000 *et seq* and Defendants Sun Loan Inc, BMC, Brundage and Doherty are ‘third party debt collectors’ as defined by TDCPA §392.000 *et seq*.

10. Defendants Sun Loan Alice, Brundage, and Doherty are all defined as “persons” of Defendant Sun Loan Inc who is defined as an “enterprise” under “Racketeer Influenced and Corrupt Organizations Act” as codified in 18 USC §1961 *et seq* (“RICO”).

II. SUN LOAN OPERATIONS

11. Sun Loan Inc is the owner of the trademark “Sun Loan Company®”. Sun Loan uses that trademark when it advertises, via US Mail, wire services etc., and that trademark gives a brand name to the consumer loan services that each storefront, such as Sun Loan Alice, provides.

12. Sun Loan Inc has 250+ store front locations in the United States and those store front locations are set up through limited partnerships with Sun Loan Inc listed as ‘the General Partner’ for these partnerships. Each of the limited partnerships may own multiple small loan storefronts. By the use of limited partnerships and family trusts, Sun Loan Inc is able to maintain the ownership, management, and control over the activities of all employees at the storefronts including the Sun Loan Alice storefront.

13. The storefront locations are customarily rented and the assets of the storefronts normally consist of its loan accounts, chairs and minimal office furniture and equipment. All loan payments are made at the Sun Loan storefront – in person. Each storefront location runs the same computer software – software which has been chosen and customized at the direction of BMC. The computer software generates the loan

contracts and it also visibly shows the employees how much they need to collect from the customer before renewing the loan and what amount to make the loan renewal for. The computer software run at the storefront location generates no cash receipts, nor does the storefront have pre-printed cash receipts for when customers present the storefront employees with cash or check payments – and no cash receipt for when they Sun Loan is presenting cash or check disbursements to the customer. The storefront employees do not return the ‘retired’ loan contract back to the customer when the customer enters into a renewal contract. The storefront employees are not educated as to how to make any of the calculations used on the loan contract on their own. The employees are not educated as to the verbiage that appears on the contracts and thus cannot explain to the customers, if asked, as to the meaning. The employees have little or no knowledge of the collection laws written to protect the consumer – even though a large percentage of their time on the job is spent collecting and their large number of renewals is, in large part, dependent on aggressive collection methods. The computer software run at the storefront, on a renewal, does not generate meaningful accounting info for the customer’s account record that would indicate anything other than the calculation for the rebate and then a zero outing of the rest of the balance. The storefront employees do not generate any solicitation/ collection letters to send to their customers through the mail. The storefront employees receive bonuses based on the profits of the storefront and the most profitable income that the storefront receives is from loan renewals.

14. Brundage Management Company, Inc. (BMC) performs all management functions for the Sun Loan storefronts, including Sun Loan Alice, from its headquarters

in San Antonio, TX and have been doing so since at least July 1993. BMC's main purpose is to oversee the business interests of the Brundage extended family. Functions BMC provides for Sun Loan Inc, which includes the storefront – Sun Loan Alice, include, but are not limited to, executive level management decisions, human resources, employee recruitment and training, advertising, accounting, licensing and auditing functions, information technology, representation on state and national boards and governing bodies, and long-term strategic planning. Supervisors and Regional Managers that are employees of BMC handle daily management decisions for Sun Loan Inc – and those employees of BMC also handle the out of the ordinary decisions for the storefronts. BMC, and specifically its employee Hugh Doherty, also do third party debt collection on behalf of the storefronts although they do not hold a Texas Debt Collection Bond. The employees of Sun Loan Alice receive their paychecks from BMC, they are trained by BMC in how to do their job, all their 'rules', 'policies' and 'procedures' come from BMC, and when anything out of the ordinary occurs - they know to contact BMC to make any decisions. The storefront employees refer to BMC as the 'home office' or 'corporate office'. Whereas the storefront does not send out solicitation letters, BMC does send out letters soliciting certain storefront customers to come in and renew their loans – these letters are offering to allow the customer to skip a payment and/or to receive monies back that they have paid in if they renew. The storefront is not aware that these letters have gone out for particular customers until those customers show up at the storefront with the letter in hand. These solicitation/collection letters reflect BMC's day to day involvement in the storefront's business.

15. BMC has a financial relationship with the storefront locations whereby BMC expenses monthly 'management fees' as a percentage of the ledger balance.

16. Sun Loan Alice has listed, as a General Partner, Sun Loan Inc and, as a Limited Partner, Thomas Brundage. Thomas Brundage is also listed as an Officer and employee of BMC, the President of Sun Loans Alice and an officer/stockholder of Sun Loan Inc. Thomas Brundage owns and manages a large percentage of the entities that own, manage or control Sun Loans and receives a large monetary distribution from each entity based on the profits of ill-gotten gains.

17. Sun Loan has developed and implemented an unlawful and fraudulent practice of using deception and oppression to flip loans. The 'form' of Sun Loan's dealings has the appearance of granting short term loans – but the 'substance' or 'sprit' of the culmination of their dealings is granting and continually renewing loans in such a manner in which to receive usurious interest. Sun Loan conceals that it intends to use any means possible to **prevent** loan payoff. Sun Loan takes advantage of the willingness of borrowers to concede to whatever may be demanded or to promise whatever may be exacted in order to obtain temporary relief from both threats to illegally debt collect, illegal debt collection and financial embarrassment. Sun Loan never discloses to the customers up front that they will be forced through harassment, intimidation and threats to renew the loan when they cannot make a payment on time. Sun Loan never discloses that when you cannot get together the money for the payment and you have not made enough in payments to cover the total interest outstanding, you will be pushed to renew the loan with an increase in the principal amount of the loan and that will culminate and result in higher interest than that is

allowed by law. Sun Loan never discloses that when you renew a loan, none of the payments you have made will apply towards the principal of the outstanding loan and you will be responsible for additional fees and interest.

18. When the Plaintiffs were even one day delinquent on their payment to Sun Loan, the storefront employees start calling, every number, every contact for Plaintiffs – and they are relentless. Sun Loan’s written policy for their storefront employees states, “All collection calls are not the same. The majority of calls you make to past due customers may not be collection calls, but sales calls”. A Sun Loan debtor will soon learn that they can never avoid speaking with Sun Loan. Sun Loan has a written policy for its storefront employees that states that “if you **CAN** locate the customer, but they will not return your call” they have ‘skipped’. The checklist to follow for ‘skips’ includes: Contact the referral source; Telephone the neighbors listed on the application; Contact the landlord to verify residence and ask the landlord for any references might have; Contact the employer and leave a message with someone who may know them; Contact all references on the application; Contact any local creditors; etc. Sun Loan employees are instructed, “A list of relatives and friends is obtained from every customer when the loan is made. This is an excellent source of information for locating a skip account because the list contains the names and addresses of the customer’s parents, brothers, sisters, relatives-in-law and children¹....Although some creditors may not want to divulge information...many creditors will cooperate and share their information. If creditors are uncooperative, obtain a new credit report and look at the most recent inquiries or accounts and follow up on this information...The list of possible skip tracing sources is

¹ The only ‘authorization’ given on the form is by the Plaintiffs to make these third party calls is I “hereby grant you as lender the right to verify all information on this credit application to include obtaining a credit report from an authorized credit reporting agency.”

endless. There are clubs, neighborhood associations, churches, labor unions, banks, local merchants, Etc. Don't overlook the obvious source". As if that were not enough, Sun Loan Storefront employees also do 'fieldwork' – i.e., they physically go to the customer's home or talk to the customer's neighbors or go to customer's place of employment or business. These hard core collection methods are not just used when a payment is overdue by a month or several months - a Sun Loan customer who makes their payment as little as six days late – may already have been called, at home on their cell and at work, numerous times, their relatives may have been called and they have been demanded to have the Plaintiffs come in and make their payments (i.e the disclose the loan to third parties to embarrass the Plaintiffs into returning their calls and returning to the storefront), their employer may have been contacted, the neighbors may have been contacted and a storefront employee may have come to their home or office and demanded payment.

19. Regardless of the fact that customers are required to sign contracts with a duration of at least six months, Sun Loan Inc has a 'scheme' to 'flip' or renew customer loans every 60 to 90 days or after the borrower has hopefully made at least two full payments² and/or before the loan can get two months in the arrears. At the time of the flip/renewal, all of the payments made on the prior contract are applied to the interest charges/fees without reducing the principal owed by even a dollar - most or all of the monies the customer paid toward the prior contract end up being left in the coffers of Sun Loan.

² Two full payments is generally sufficient to cover the installment handling charge and the acquisition charge fees on the loan.

20. The finance charge for loan renewal consists of two extremely profitable components, the 'Installment Account Handling Charge' and the 'Acquisition Charge'. The Acquisition Charge component is a flat \$10 fee that is earned in its entirety as soon as the contract is signed – there is no explanation as to what the \$10 fee covers. The finance charge, i.e., the "Installment Account Handling Charge" is 'front loaded' or 'pre-computed', and Sun Loan Inc retains a majority of it upon renewal after 60 days. The formula for Sun Loan's 'Sum of the Period Balances Method' is not disclosed and is, in any event, incomprehensible to most. By use of the verbiage 'Sum of the Periodic Balances Method', Sun Loan Inc is able to hide from the consumer that the actual method being used to calculate interest and payments is the Rule of 78's - and by the use of the Rule of 78's, Sun Loan Inc is able to thereby conceal the huge advantage it gains (at the customer's expense) of renewing (flipping) loans every 60 to 90 days. No employee at the storefront is aware of how this fee is calculated and could not explain it to the customer, such as the Plaintiffs, even if they asked.

21. With a simple interest loan, when the borrower makes a payment, a fixed amount of that payment goes to pay interest on the loan and a fixed amount goes to pay down the principal of the loan. With a Sum of the Periodic Balances Method loan, when the customer makes the first payment, a larger majority of that first payment goes towards the interest than it would for a fixed rate loan. It is all a matter of timing. The 'rebate' for this type of loan is based on how many days the customer is in the loan – for instance, if the customer is 62 days into a 6 month contract, a 'renewal' at this point will allow Sun Loan to retain the same amount of interest they would gain if the customer remained in the contract for 90 days – and that retained amount would be an astounding +61% of

the total finance charge due on the loan. If Sun Loan can flip a \$200 loan twice in a six month period, they bring in \$88+ rather than the \$58 they would have gained had they let the initial loan go to completion - i.e., an additional 53% increase in profit.

22. Each renewal contract consistently sets the payment due date to a new day of the month – another means to ensure the customer will probably miss correctly paying on that new date. The storefront employees will start calling the customer the **very first business day** following a payment due date - when another month's interest is already due.

23. Sun Loan Inc earns the vast majority of its profit by loan flipping, primarily because it earns the same finance charge on a renewal as a new loan, but only has to advance a fraction of the cash, or no cash to the customer at all, on a renewal. This 'flipping' allows Sun Loan Inc to maximize profit on finance charges and fees with no regard to the customer's 'need' to be renewed. These loan renewals are the cornerstone of their profits. Renewals intentionally prevent customers from paying off the loan. Renewals ensure that the principal is never reduced. Renewals keep the customer's loan balance above the amount that could be paid off and thus lead to increases in the principal due which, in turn, increases the amount of interest due. Thus the loans are consistently renewed even though the customer might not have the money to make the current payment.

III. FACTS

24. Plaintiffs are a married couple who incurred financial obligations that were primarily for personal, family or household purposes and is therefore a "debt" as that term is defined by the Texas Finance Code.

25. When Plaintiffs took out their initial loans, they did so at Sun Loan Alice storefront location in Alice, Texas where loans are made and payments are received.

26. The Plaintiffs became caught up in Sun Loan Inc's practice of 'flipping' loans – and they soon found themselves on a debt treadmill.

27. Adrian Benevide's initial loan was flipped 26 times and Anita Benevide's loan was flipped 30 times.

28. The total amount of money Sun Loan was ever out of pocket for Anita was \$200.00 – for which she made payments to them totaling \$3,507.55 – and Sun Loan reduced the principal amount outstanding on her loan not even a penny, in fact they increased it, in steps, from \$200 to \$542.86. Additionally, although they increased her payments over the years by +250%, then never obtained another credit report to see if she could qualify for the increases they were pushing on her and they knew by her inability to make any timely payments that she was not finally able to contract in these loans.

29. The total amount of money Sun Loan was ever out of pocket for Adrian was \$301.62 – for which he made payments them in the amount of \$4,611.40 – there was never a reduction in the principal of his loan, and in the principal owing increased from \$301.62 up to, eventually, \$703.47. Additionally, although they increased his payments over the years by +500%, they never obtained another credit report or took another application from him to see if he could qualify for the increases they were pushing on him and they knew by his inability to make any timely payments that he was not finally able to contract in these loans.

ANITA BENAVIDES CONTRACTS (ACCOUNT 406: CONTRACTS 1-31)

30. On or about June 1, 2004, Anita Benavides (hereinafter "Anita") placed a called and did an over the telephone application with Sun Loans, through Sun Loan Alice manager Norma Martinez (hereinafter "Ms. Martinez"), for a \$510.00 loan to pay some medical bills. At that time, Ms Martinez took all Anita's personal particulars and financials, including but not limited to personal references and every contact telephone number they could obtain from Anita. See attached application attached hereto as **Exhibit 1**, and incorporated herein by reference. After this application was completed, Ms. Martinez denied Anita the \$510.00 loan as Sun Loan alleged that it did not consider Anita a good credit risk – but they did agree to grant her a \$200.00 loan. Anita agreed to accept the \$200.00 loan from Sun Loan and the parties executed a Promissory Note on **June 2, 2004, Contract 1**. See attached Note, **Exhibit 2**, and incorporated herein by reference. After adding the acquisition fee of \$10 and the installment account handling charge of \$48, the total loan outstanding was \$258 to be paid off in six monthly payments of \$43 each. Other than pointing out the payment dates and amount, Ms. Martinez did not explain the other contract terms to Anita. Not surprisingly, Ms. Martinez, when later deposed, had no idea what the contract verbiage 'acquisition fee' and 'installment account handling charge' mean or what fees are allowed under the Texas Finance Code for any loans offered by Sun Loan or how the calculation is made in the 'AMOUNT OF THE AMOUNT FINANCED' area of the contract. Anita made her first payment on time and in full. Anita's second payment was due on Monday August 2, 2004 and Anita failed to make the payment on the due date which resulted in Ms. Martinez, the very next day, calling Anita at home and on her cell and eventually leaving a message. Anita, in response, returned Ms. Martinez's call and then went into the

store and made a full payment. At that time, Ms. Martinez made the offer to renew Anita's loan – she presented it as an opportunity to 'get back' some of the monies that she had already paid on the Contract – with no mention made of the downside of the renewal to Anita. Two days later, Anita did go back to the storefront and renewed the loan. Because this renewal took place 64 days after the inception of Contract 1, Sun Loan retained 90 days of interest plus the \$10 acquisition charge – for a total of \$44.29. Anita does not recall what monies might have been given her to renew, if anything - and, conveniently, the Sun Loan Alice 'accounting records' for the loan, simply show that they zeroed out the loan on their books and reflect no disbursement to Anita. The accounting records for none of the contracts Anita entered into reflect Anita receiving any monies during a loan renewal/flip.

31. On **August 5, 2004**, Anita entered into a renewal contract, **Contract 2**, which again obligated Anita to \$200.00 plus another \$10 acquisition charge and interest. See Note, **Exhibit 3**, attached hereto and incorporated herein by reference. The payment date on the contract has changed from the 2nd of the month to the 5th of the month. The first business day after the first payment was due on the loan, Ms. Martinez started calling Anita regarding her missed September payment due date – she started by calling the residence and leaving a message and then called the cell phone and left a message. Anita called back and promised to come in to the office on September 10th. On the 10th, before Anita could get into the office, Ms. Martinez called Anita to ensure that Anita was coming. At this point the payment was only five days late. Anita did make her \$43 payment on the 10th. On Oct 5 another payment was due – and missed. On Oct 6, Ms. Martinez started calling and continued calling until she reached Anita . At

first Anita promised to come in on the 11th, then she promised to come in on the 12th – and Anita, who was lacking the payment amount, did come in on the 12th but only after she was offered yet another loan renewal without having to make a payment – i.e., Sun Loan is, in essence, allowing her to skip a payment and they are keeping all the monies from her September \$43 payment and applying none of it to principal and all of it to the finance charge. At this point, Anita has been in this contract for 68 days and had been in two contracts for a total of 132 days - and she had made only one payment on time. But she has paid Sun Loan payments totaling \$129 and none of that amount of monies has been applied to the \$200 principal.

32. On **October 3, 2004**, Anita entered into a renewal contract, **Contract 3**, which again obligated Anita to the original loan balance of \$200.00 – and tacked onto that is the \$10 acquisition charge and interest. See Note, **Exhibit 4**, attached hereto and incorporated herein by reference. The payment date has changed from the 5th of the month to the 12th of the month. Anita fails to make the payment on the Friday due date and Ms. Martinez start her phone calling on Monday the 15th. On the 17th, Anita promises to pay on the 19th. That does not happen. Sun Loan Alice storefront employee Adriana Vega then starts calling Anita and, after nine phone calls with no results, finally encourages Anita to borrow the money for the payment so she can make a payment by November 29. When Ms. Vega reaches Anita again on the 29th, Anita says she was not able to borrow the money but promises to bring them a postdated check which they cash and post to Anita's loan – the amount of this payment included a \$2.15 late charge. This payment was made 17 days late. On December 12, the next payment is due and is missed and the phoning starts again. Between December 12 and December

20, Ms. Martinez makes 15 phone calls – not only to Anita but to the references that Anita provided with her loan application, even though Anita had never given Sun Loan permission to make those calls to third parties and disclose that she owed any debt to Sun Loan. After one of Anita's references is called for the second time in a three day period, Anita comes into the storefront, at this point she is 8 days delinquent, but she does not have the money available to make the payment. Anita has been in this 6 month contract for a total of 69 days. It is explained to Anita that if she can just pay \$2 today, they can renew her loan and prevent her from becoming delinquent. Anita's prior \$43 payment and this \$2 payment are enough to pay the \$44.29 due and owing for the finance charge. By this time, Anita has paid Sun Loan payments totaling \$172 and late charges of \$2.15 – for a total of \$176.15 in Sun Loan's pocket.

33. On **December 20, 2004**, Anita entered into another renewal contract, **Contract 4**, which again obligated Anita to the original loan balance of \$200.00 – and once again she is being hit for the \$10 acquisition charge and the installment account handling charge. See Note, **Exhibit 5**, attached hereto and incorporated herein by reference. The payment date has changed from the 12th of the month to the 20th of the month. The payment due on January 20th is not met and the phone calls start – fifteen calls, two to references – and promises made and broken - and Anita is told that Sun cannot wait for their money and they encourage her again to borrow the money for the payment. On the 31st Anita makes a \$45.15 payment – she made her payment 11 days after the due date. Anita also does not make her January 20th payment on time, which results in more phone calls and finally the \$43 payment being made 5 days late. The next payment due date would be March 20th, but Anita comes in on March 10th and makes a

\$158.29 payment and pays off the loan. Anita was in this 6 month contract for a total of 80 days. By this time, Anita has paid Sun Loan payments totaling \$422.59 on her \$200 loan.

34. Anita, who had to borrow the money to pay off the loan with Sun Loans, comes in on **April 13, 2005** to enter into yet another contract with Sun Loan – to pay off the loan with the other lender. The new contract, **Contract 5**, again obligates Anita to a loan of \$200.00 to be paid at \$43.00 for 6 months – with \$58 tacked on for the acquisition charge and the installment account handling charge. See Note, **Exhibit 6**, attached hereto and incorporated herein by reference. The payment date has changed from the 20th of the month to the 13th of the month. When Anita fails to make the May 13th payment, she is called and finally comes in on the 20th, 7 days late, to make her \$43 payment. When Anita fails to make the June 13th payment, she is called multiple times and offered yet another renewal. Anita does not have the money to make this payment, but she does come in on June 15, when she is two days late, to talk with Sun Loan. Although only one payment on this contract has been made, and that payment was late, Sun Loan now offers to let her skip this payment and increase the amount of the loan by \$53.23. They do this even though Anita is only two days late and has only been in this six month contract for 63 days. It is explained to Anita that the increase is necessary as, at this point, she has only made one payment of \$43 and she is owing them \$44.29 in fees (i.e., there is not enough funds to cover their costs as she only made one payment, so the loan increase in the renewed loan will be used to make up for her deficit on this loan). At this point, Anita has been doing business with Sun Loan for one year and although Sun

Loan's total 'out of pocket' expense was \$200.00, Anita has made payments totaling \$466.88.

35. On **June 15, 2005**, a new Note, **Contract 6**, was executed which increased Anita's loan from \$200.00 to \$253.23 – and she is being hit for the \$10 acquisition charge and an increased installment account handling charge. See Note, **Exhibit 7**, attached hereto and incorporated herein by reference. The due date has now changed from the 13th to the 15th. Anita makes her first payment on time and in full. But, before the second payment was even due, Sun Loan reached Anita and explained it was time for her to renew her loan, even though she was current, had only been in the contract for 57 days, and the loan was not to expire for over four (4) months. Although the payment amount had been increased to \$54 - Anita had only made one payment – the total interest had increased to \$70.77 and due and owing of that amount was \$41.83. This left a deficit of \$28.94 in the account. Regardless, this flip takes place without Sun Loan asking Anita to make up the deficit. At this point, Anita has paid Sun Loan payments totaling \$520.88 – they are still out of pocket only \$200 – and not one penny of Anita's payments have been applied to the principal.

36. On **August 11, 2005**, a new Note, **Contract 7**, was executed which again obligated Anita to \$253.23 – and once again she is being hit for the acquisition charge and the installment account handling charge. See Note, **Exhibit 8**, attached hereto and incorporated herein by reference. The due date has changed from the 15th to the 11th. Anita misses the September 11th payment and the calls start on the 12th. Anita comes in on the 20th, 8 days late, and makes a full payment. Anita contacts Sun Loan three days before the next payment is due and informs them she will be 3 days late in making her

payment. Anita misses making that newly arranged date and the home and work phone calls start up again on that same date. Finally Sun Loan gets a commitment from Anita to bring in a postdated check and leave it at the office. That check is good and posts to Anita's account on the 17th. Anita's second payment for this contract is just six days late. Regardless of the fact that the contract still has four months to run and Anita is current, again Sun Loan announced to Anita that it was time to renew her contract, so Anita agreed to come back in and sign another contract. At this point, Anita has paid Sun Loan payments totaling \$628.88 – they are still out of pocket only \$200 – and not one penny of Anita's payments has been applied to the principal.

37. On **November 3, 2005**, a new Note, **Contract 8**, was executed which again obligated Anita to \$253.23 – and once again she is being hit for the \$10 acquisition charge and the installment account handling charge. See Note, **Exhibit 9**, attached hereto and incorporated herein by reference. The due day changed from the 11th to the 3rd. When she was one day late for the first payment, Sun Loan called Anita at home and at work repeatedly - Anita makes a full payment three days past the due date. When Anita is one day late on the second payment, Anita is called and it is explained to her that it was time to renew her contract – regardless of the fact that she has only been in this six month contract for 62 days. They are offering her this renewal even though her account holds only \$54 and the interest due is \$53.41. At this point, Anita has paid Sun Loan payments totaling \$682.88– they are still out of pocket only \$200 – and not one penny of Anita's payments has been applied to the principal.

On **January 4, 2006**, a new Note, **Contract 9**, was executed which again obligated Anita pay \$253.23 – including another acquisition charge and interest. See Note,

Exhibit 10, attached hereto and incorporated herein by reference. The due day changed from the 3rd to the 4th. When Anita was one day late for the first payment, Sun Loan called Anita repeatedly at home and work until she showed up at the office with a full \$54 payment – six days past due. When Anita was late for the second payment, calls were made and Anita came in with a full payment on March 6th – two days past due. On March 8, 2006, the corporate offices managed by Brundage and BMC, sent Anita an advertisement, via US Mail, enticing her back in to receive additional monies for another renewal. On March 29, 5 days before her due date and only 84 days into a six month contract, Anita did come back into the office and her loan was renewed and the loan amount was increased \$48.28. Although it might appear that Sun Loan was handing Anita ‘new monies’, at this point they are just returning some of what Anita had already paid to them. At most, they were reducing their profit. At this point, Anita has paid Sun Loan payments totaling \$790.88.

38. On **March 29, 2006**, a new Note, **Contract 10**, see Note, **Exhibit 11**, attached hereto and incorporated herein by reference, was executed which obligated Anita to a loan balance of \$253.23 – a \$48.28 increase from her last loan. Along with an increase in loan balance is a corresponding increase in the interest rate – the \$10 acquisition fee remains the same. Additionally, the loan term has been increase from 6 months to 8 months resulting in a decrease in the payment amount from \$54 to \$51 and the due day has changed from the 4th to the 29th. The first payment is made in full and on time. After three calls, starting one day past the due date was missed, Anita goes into the office and makes another full payment – four days late. On June 2, 2006, BMC sent Anita another advertisement, via US Mail, enticing her back in for yet another renewal.

On June 8th Anita is back in the office signing another renewal. Her total payments under the current contract were \$108 – enough to cover Sun Loan's \$66.28 in fees for this 71 day period of time. At this point, Anita has paid Sun Loan payments totaling \$892.88.

39. On **June 8, 2006**, a new Note, **Contract 11**, was executed which again obligated Anita to \$408, including another \$10.00 acquisition charge and another \$96.48 installment handling charge. See Note, **Exhibit 12**, attached hereto and incorporated herein by reference. The payment due day was changed from the 29th to the 8th. During the 69 days, of 240, that Anita remained in this loan, she received 3 calls to her residence to implore her payment as she was 6 days late making the first payment and 3 days late with the second payment. On August 14, 2006, BMC sent Anita another advertisement, via US Mail, enticing her back in for yet another renewal. On August 16th Anita is back in the office signing another renewal. Her total payments under the current contract were \$108 – enough to cover Sun Loan's \$66.28 in fees for this 69 day period of time. At this point, Anita has paid Sun Loan payments totaling \$994.88.

40. On **August 16, 2006**, a new Note, **Contract 12**, was executed which again obligated Anita another \$10 acquisition charge and a \$96.48 installment handling charge. See Note, **Exhibit 13**, attached hereto and incorporated herein by reference. The payment due day was changed from the 8th to the 16th. Under this loan, Anita made two payments and when she was late, Sun Loan called Anita at home and at work repeatedly. Anita's first payment was 5 days late and her second payment was 4 days late. Then, on October 20, 2006, BMC sent, via US Mail, an advertisement to Anita in an attempt to get her to renew her loan before her contract was completed. On

November 16th - the due date of Anita's next payment - instead of making her next payment, Anita is signing yet another renewal. Her total payments under the current contract were \$108 – enough to cover Sun Loan's \$66.28 in fees for this 92 day period of time. At this point, Anita has paid Sun Loan payments totaling \$1,096.88 – and is still obligated to them for \$408.

41. On **November 16, 2006**, a new Note, **Contract 13**, was executed which again obligated Anita to the balance loan of \$301.52 along with another \$10.00 acquisition charge and \$96.48 for the installment handling charge. See Note, **Exhibit 14**, attached hereto and incorporated herein by reference. The 'you are late' calls continue – Anita was 13 days late making the first payment and 10 days late making the second payment. Anita made the third payment one day early. Regardless, on February the 2nd and 21st storefront employee JL is contacting Anita and offered her a renewal – and, on February 20, 2006, BMC is sending her another advertisement, via US Mail, making that same offer. On February 26th, Anita does return to the storefront and enters into a renewal contract. For the period of this contract, Anita has made payments of \$153 – more than an ample amount to cover the acquisition fee and interest due to Sun Loan for this 102 day period, i.e., \$79.62. At this point, Anita has paid Sun Loan payments totaling \$1,249.88.

42. On **February 26, 2007**, a new Note, **Contract 14**, was executed which obligated Anita to yet another \$301.52 loan, another \$10.00 acquisition charge and another \$96.48 in installment handling charges. The day due has changed from the 16th to the 26th. See Note, **Exhibit 15**, attached hereto and incorporated herein by reference. Anita came in 3 days early and made her first payment, but the calls continue when she

is four days late with her second payment. When Anita makes that second payment, April 30, 2006, BMC sends her, on that same day, via US Mail, an advertisement in an attempt to get her to renew her loan again. On May 3, Anita does come in and renew her loan which results in another 'loan increase' – this time for \$48.49. For the 66 days that Anita remained in this contract, she made payments of \$102 – more than enough to cover the acquisition fee and interest due to Sun Loan for this period of time \$75.33. At this point, Anita has paid Sun Loan payments totaling \$1,351.88.

43. On **May 3, 2007**, a new Note, **Contract 15**, was executed which now obligated Anita to a new loan whose amount had increased from \$301.51 to \$350.00. Obliging her to the \$10 acquisition charge again and a higher installment handling charge of \$112. The day due changed from the 26th to the 3rd. See Note, **Exhibit 16**, attached hereto and incorporated herein by reference. Anita failed to make her first payment on the 3rd, so the phone calls started and end only when Anita came in on the 15th and made a full payment – 12 days late. When the second payment is one day past due, the phone calls start again and stop only after Anita makes her second payment – 10 days late. Seven days later Anita is back in the office and Sun Loan is offering her another renewal contract. Anita has made payments of \$128 during the 78 days that have elapsed in the current contract – enough to cover Sun Loan's \$83.33 acquisition fee + finance charges + late fees. At this point, Anita has paid Sun Loan payments totaling \$1,479.88 and she is still owing them \$472.

44. On **July 20, 2007**, a new Note, **Contract 16**, was executed which again obligated Anita to make \$58 payments for the next eight months. The due day on the loan changed from the 3rd to the 20th. See Note, **Exhibit 17**, attached hereto and

incorporated herein by reference. Under this loan, Anita made two payments – both late. When Anita was one day late, Sun Loan called Anita at home and at work repeatedly. Anita made her first payment 4 days late and her second payment was 2 days late. Regardless, when Anita came into the storefront to make her second payment, Sun Loan traps her into renewing her contract again. For the 64 days that Anita remained in this contract, she made payments of \$118 – more than enough to cover the acquisition fee and interest due to Sun Loan for this period of time - \$75.33. At this point, Anita has paid Sun Loan payments totaling \$1,597.88 – yet she is still owing \$472.

45. On **September 22, 2007**, a new Note, **Contract 17**, was executed which again obligated Anita to the balance loan of \$350.00 to be paid at \$59.00 for 8 months (beginning 10/22/07) for a total of \$472.00 and Sun Loan charged Anita another \$10.00 acquisition charge and another \$112.00 installment handling charge. The payment due date has changed from the 20th to the 22nd. See Note, **Exhibit 18**, attached hereto and incorporated herein by reference. The day following the missed payment due date on the 22nd, the phone calls start. Anita explains that she cannot make a payment until the 27th. The phone calls continue and threats are made to call and speak to Anita's manager at work. The 27th comes and Anita still does not have the funds – the calls continue. On November 2, 2007, 11 days late, Anita makes a \$69 payment. When Anita also fails to make the December 22 payment – the calls continue and Anita comes in on the 26th and gives them a post dated check – that check is good and posts to Anita's account on 30th. After harassment, intimidation and threats, Anita renews her

loan with them four days later. At this point, Anita has paid Sun Loan payments totaling \$1,725.88 – and yet still owes \$472.

46. On **December 3, 2007**, a new Note, **Contract 18**, was executed which again obligated Anita to a loan balance of \$472 to be paid at \$59.00 for 8 months. The due day changed from the 22nd to the 3rd. See Note, **Exhibit 19**, attached hereto and incorporated herein by reference. When Anita knew she would not be able to make the first payment on time, she came into the office and left a postdated check which was later processed – making Anita 9 days late on that payment. Anita was unable to make her February 3 due date also. She came in on February 21, 2008 - 18 days late and with no payment in hand and was offered a renewal contract that included an increase in the loan of an additional \$54.44. This was only 49 days into this eight month contract and the account is only past due one payment. At that point in time, Anita's account contained \$60 and the amount due and owing Sun Loan for the acquisition charge and interest was \$56.67 plus a \$10 late fee for a total of \$66.67 – there is not money in the account to cover the renewal. This renewal and increase in the loan amount was obviously to cover the second payment. At this point, Anita has paid Sun Loan payments totaling \$1,785.88 – and now is still owing \$544.

47. On **January 21, 2008**, a new Note, **Contract 19**, was executed which now obligated Anita to \$544.00 to be paid at \$68.00 for 8 months – this included another \$10.00 acquisition charge and a \$129.45 installment handling charge. The due day on the loan changed from the 3rd to the 21st. See Note, **Exhibit 20**, attached hereto and incorporated herein by reference. Under this loan, Anita made two payments – one early and one only one day late. Then, on March 25, 2008, BMC sent, via US Mail,

Anita a solicitation in an attempt to get her to renew her loan before her contract was completed. Anita did come back in and sign another contract, even though her current contract had not expired and even though no one ever told Anita that she was obligating herself to more fees by the signing of these continuous agreements. At this point, Anita has paid Sun Loan payments totaling \$1,921.88 – and is still owing \$544.

48. On **April 18, 2008**, a new Note, **Contract 20**, was executed which again obligated Anita to \$544.00 when the \$10 acquisition charge and \$129.45 in interest are included. The payment due date has changed from the 21st to the 18th. See Note, **Exhibit 21**, attached hereto and incorporated herein by reference. Anita was only one day late with her first payment. But, as she did not have the funds to make the second payment, Sun Loan agreed to accept a \$1 payment on the due date along with a post dated check for \$67 to be cashed on the 27th, i.e., 9 days past the due date. Five days after the second payment was posted, Anita was coerced into signing yet another renewal when she had been in this contract for only 74 days. This renewal is for an increased amount of \$48.84. At this point, At this point, Anita has paid Sun Loan payments totaling \$2,057.88 – and is still owing \$544.

49. On **July 1, 2008**, a new Note, **Contract 21**, was executed which now obligated Anita to an increased loan of \$608.00, including the acquisition charge and interest, to be paid at the increased payment amount of \$76.00 for 8 months. The interest charge has increased from the prior loan by \$15.52. The payment due date has changed from the 18th to the 1st. See Note, **Exhibit 22**, attached hereto and incorporated herein by reference. Anita made her first payment 4 days late after receiving numerous phone calls. As soon as Anita is one day past making her second payment on time, the phone

calls start and, in addition, BMC sends out a third party debt collection letter. Anita comes in on the 5th, 4 days late, and makes her full payment. On the very next day, Anita's loan is renewed again even though Anita has only been in the loan for 67 days and there are 6 months left on the loan. At this point, Anita has paid Sun Loan payments totaling \$2,209.88 – and is still owing \$608.

50. On **September 6, 2008**, a new Note, **Contract 22**, was executed which again obligated Anita to \$608.00, which includes another \$10.00 acquisition charge and another \$144.97 installment handling charge. The due day has changed from the 1st to the 6th. See Note, **Exhibit 23**, attached hereto and incorporated herein by reference. Anita is in this contract for 79 days and makes two payments on time. Before the third payment is due, Anita is back in the storefront renewing the loan again. At this point, Anita has paid Sun Loan payments totaling \$2,361.88 – and is still owing \$608.

51. On **November 24, 2008**, a new Note, **Contract 23**, was executed obligating Anita to \$608.00, which includes another \$10.00 acquisition charge and another \$144.97 installment handling charge. The due day has changed from the 6th to the 24th. See Note, **Exhibit 24**, attached hereto and incorporated herein by reference. As soon as Anita is one business day past making her payment on time, the phone calls start and, in addition, BMC sends out a third party debt collection letter. Anita's payment is made, in full, on the 30th, six days late. As soon as Anita is one business day past making her second payment on time, the phone calls start and, in addition, BMC sends out a third party debt collection letter. When Anita comes into the office to make her second payment, three days past the due date, she does not have the funds for a full payment and Sun Loan agrees to accept a payment of \$29.57 if Anita will

renew her loan. Before the \$29.57 payment, Anita's account was only holding \$76 which is not sufficient to cover the \$94.57 due and owing Sun Loan for their acquisition charge and interest on the loan – the difference is \$18.57. Anita was in this contract for only 64 days. At this point, Anita has paid Sun Loan payments totaling \$2,467.45 – and is still owing \$608.

52. On **January 27, 2009**, a new Note, **Contract 24**, was executed obligating Anita to \$608.00, which includes another \$10.00 acquisition charge and another \$144.97 installment handling charge. The payment due day was changed from the 24th to the 27th. See Note, **Exhibit 25**, attached hereto and incorporated herein by reference. The phone calls started on the 28th and Anita made a full payment on that date, i.e., one day late. Only **34 days** into this contract, Sun Loan is renewing Anita's loan. The \$76 in Anita's account is barely sufficient to cover the \$70.40 due Sun Loan for their acquisition charge – it leaves only \$5.60 not spoken for. But not only is Sun Loan renewing Anita's loan they are increasing it by \$89.83. At this point, Anita has paid Sun Loan payments totaling \$2,543.45 – and is now still owing \$770.

53. On **March 2, 2009**, a new Note, **Contract 25**, was executed for \$770, which includes another \$10.00 acquisition charge and increased \$217.14 installment handling charge. The payment due day was changed from the 27th to the 2nd. The payment amount has increased from \$76 to \$77. The number of months has increased from 8 to 10. See Note, **Exhibit 26**, attached hereto and incorporated herein by reference. Anita was 6 days late making her first payment and 6 days making her second payment. Regardless, when Anita comes to the office to make her 2nd payment, Sun Loan

influences her to renew her loan. At this point, Anita has paid Sun Loan payments totaling \$2,671.45 – and is now still owing \$770.

54. On **May 8, 2009**, a new Note, **Contract 26**, was executed obligating Anita to a \$770.00 loan which included another \$10.00 acquisition charge and a \$217.14 installment handling charge. The day due has changed from the 2nd to the 8th See Note, **Exhibit 27**, attached hereto and incorporated herein by reference. Anita misses her first payment due dates and the phone calls start. She does make a payment, via check, on the 17th, 9 days late. But that check bounces. Anita, after many phone calls from Sun Loan, now 21 days late, comes into the office. Sun Loan is now due: a \$77 payment; \$30 for the returned check and a \$10 late charge – for a total of \$117. Anita makes that \$117 payment. On July 8th, Anita's second payment was due. After a multitude of calls to Anita at home, work, cell phone – to her family members. Anita comes in on July 20th, 12 days late and makes a \$87 payment, \$10 of which is for the late charge. After the 2nd payment, at which time she had been in the contract for 82 days, the \$204 in her account was sufficient enough to cover the \$116.60 due and owing Sun Loan for the acquisition charge and interest plus the \$50 owing for a return check and late charges (total \$166.68). Sun Loan again renews Anita's loan. At this point, Anita has paid Sun Loan payments totaling \$2,875.45 – and is still owing \$770.

55. On **July 20, 2009**, a new Note, **Contract 27**, was executed which again obligated Anita to the balance loan of \$542.86 to be paid at \$77.00 for 10 months (beginning 8/20/09) for a total of \$770.00 and Sun Loan has charged Anita another \$10.00 acquisition charge and another \$217.14 installment handling charge. The payment due day has changed from the 8th to the 20th. See Note, **Exhibit 28**, attached

hereto and incorporated herein by reference. As soon as Anita is one business day past making her first payment on time, the phone calls start and, in addition, BMC sends out a third party debt collection letter. After many broken promises, Anita comes in 22 days late and makes a \$106.01 payment - \$10 of that is for a late charge. When the second payment due date is also missed, the phone calls start again and, in addition, BMC sends out a third party debt collection letter. Nineteen days late, Anita makes an \$87 payment - \$10 of that is for the late charge. Ten days after making this payment, and 81 days after Anita entered this loan, Sun Loan has Anita back in the office and she is locked into another loan renewal. At this point, Anita has paid Sun Loan payments totaling \$3,068.55 – and is still owing \$770.

56. On **October 9, 2009**, a new Note, **Contract 28**, was executed which again obligated Anita to a \$770 loan – including another \$10.00 acquisition charge and another \$217.14 installment handling charge. The payment due day has changed from the 20th to the 9th. See Note, **Exhibit 29**, attached hereto and incorporated herein by reference. Under this loan, Anita made two payments both of which were late, the first by eleven days and the second by nine days. The storefront employees called Anita at home and at work repeatedly regarding these missed payments. Regardless, on November 2, 2009 and December 2, 2009, BMC sent, via US Mail, Anita a solicitation in an attempt to get her to renew her loan before her contract was completed. Ten days after her second payment was made, Anita came back into the storefront – when she had been in this contract for only 80 days (of 300) – after she has paid them \$164 in payments – and Anita was signing for yet another loan renewal. At this point, Anita has paid Sun Loan payments totaling \$3,232.55– and is still owing \$770.

57. On **December 28, 2009**, a new Note, **Contract 29**, was executed which again obligated Anita to a \$770 loan – including another \$10.00 acquisition charge and another \$217.14 installment handling charge. The payment due day has changed from the 9th to the 28th. See Note, **Exhibit 30**, attached hereto and incorporated herein by reference. On January 21, 2010, before the first payment was even due on the loan, BMC sent Anita an advertisement, via US Mail, in an attempt to get her to renew her loan. When Anita missed her first payment due date, the calls begin. Anita made her first \$77 payment three days late. Six days before her second payment was due, Anita received a call asking her to come in on the 22nd. She was told that if she came in on that date, she would only have to make a \$20 payment instead of paying \$77. Anita did come in - and found herself having to enter into yet another renewal – even though Anita had been in her current contract for a mere 56 days. Of importance is the fact that Anita, after paying the \$20, had made payments totaling \$97 which was enough to cover Sun Loan's \$85 acquisition charge and interest. At this point, Anita has paid Sun Loan payments totaling \$3,329.55 – and is still owing \$770.

58. On **February 22, 2010**, a new Note, **Contract 30**, was executed which again obligated Anita to a loan of \$542.86 to be paid at \$77.00 for 10 months (beginning 3/22/10) for a total of \$770.00 and Sun Loan charged Anita another \$10.00 acquisition charge and another \$217.14 installment handling charge. The day due has changed from the 28th to the 22nd. See Note, **Exhibit 31**, attached hereto and incorporated herein by reference. When Anita missed her first payment due date, the calls begin and, in addition, on March 27, 2010, 5 days after Anita missed her first payment, BMC sent Anita, via US Mail, a third party debt collection letter. Anita made her first payment

18 days late resulting in her also having to pay an additional \$10 late charge. On April 15, 2010, before the second payment was due on the loan, BMC sent Anita another advertisement, via US Mail, in an attempt to get her to renew her loan. Anita missed paying her second loan payment on the 22nd and the calls started again. On April 30, when Anita is eight days late on her payment, Sun Loan calls and solicits another renewal. Anita comes in and presents Sun Loan with a \$77 check – the renewal does not happen. Anita's check bounces, a \$30 return check charge is tacked on, and the calling begins again – this time including calls to all the 'references' and 'nearby' phone numbers (neighbors). Anita comes in on May 10, 2010 and it is explained to her that she is required to make two payments, one for \$77 and one for \$14 and then she must once again sign a renewal. On paper, the \$10 late charge is taken out of the \$77 payment. Anita has been in contract 30 for 77 days. And, at this point, Anita has paid Sun Loan payments totaling \$3,507.55 – and is still owing \$770.

59. On **May 10, 2010**, a new Note, **Contract 31**, was executed which again obligated Anita to pay \$770.00, including once again another \$10.00 acquisition charge and another \$217.14 installment handling charge. The day due changed from the 22nd to the 10th. See Note, **Exhibit 32**, attached hereto and incorporated herein by reference. This was the last Note entered between Anita and Sun Loans. On June 3, 2010, before the first payment was even due on the loan and regardless of the fact that Anita had a bounced check in the prior contract and had made payments eighteen days late, BMC sent Anita an advertisement, via US Mail, in an attempt to get her to renew her loan. Anita made no payments during the ten month duration of this contract. Sun Loan made twenty calls to her residence, forty seven calls to her cell phone, seventeen calls

to 'nearby' cell, two calls to Anita's parents, seven calls to Anita's sister, two calls to another of Anita's sisters. In addition, they came to her house twice. It was during the period of this contract that Anita obtained attorney representation.

60. TABLE OF ANITA'S LOANS (LOAN 1 – 31)

Anita Benavides	406-1 Contract 1 6/2/2004 \$200 6 Month Loan	406-2 Contract 2 8/5/2004 \$200 6 Month Loan	406-3 Contract 3 10/12/2004 \$200 6 Month Loan	406-4 Contract 4 12/20/04 \$200 6 Month Loan	406-5 Contract 5 4/13/2005 \$200 6 Month Loan	406-6 Contract 6 6/15/2005 <u>\$253.23</u> 6 Month Loan	406-7 Contract 7 8/11/2005 \$253.23 6 Month Loan	406-8 Contract 8 11/3/2005 \$253.23 6 Month Loan
Finance Charge is All Fees	\$10 +48 = \$58	\$10 + \$48 = \$58	\$10 + \$48 = \$58	\$10 + \$48 = \$58	\$10 + \$48 = \$58	\$10 + \$60.77 = \$70.77	\$10 + \$60.77 = \$70.77	\$10 + \$60.77 = \$70.77
		NOTE: Only One Payment Made on This Loan		<u>NOTES reflect that this loan was paid in full on 3/10/05</u>	NOTE: Only One Payment Made on This Loan	NOTE: when the prior loan was \$1.29 short, the loan amount of the renewal loan was increased		NOTE: Only One Payment Made on This Loan
Contract Payment Amount	\$43	\$43	\$43	\$43	\$43	\$54	\$54	\$54
Payment Due Day	2 nd	5 th	12 th	20 th	13 th	15 th	11 th	3 rd
# Days before Loan Renewed	64 days	68 days	69 days	Loan Paid Off in 80 Days	63 days	57 days	84 days	62 days
Payments Anita Made During This Contract Term	7/2 pymt \$43 – bal \$215 8/3 pymt \$43 – bal \$172	9/10 pymt \$43 – balance \$215	12/3 pymt \$45.15 – bal \$215 (\$2.15 late charge) 12/20 pymt \$2 NOT A FULL PAYMENT	1/31 pymt \$45.15-bal \$215(\$2.15 late charge) 2/25 pymt made \$43 – bal \$172 3/10 Payout made on loan - \$158.29	5/20 pymt \$43 – bal \$215	7/15 pymt \$54 – bal \$270	9/9 (9/20) pymt \$54 – bal \$270 10/17 pymt \$54 – bal \$216	12/6/05 pymt \$54 – bal \$270
Total Payments Anita Made on This Contract	\$43 + \$43 = \$86	\$43	\$45.15 + \$2 = \$47.15	\$45.15 + \$43 + \$158.29 = \$246.44	\$43	\$54	\$54 + \$54 = \$108	\$54
The Amount of Money Sun Loan Retained for Acquisition Charge & Interest & Late Charge & Returned Check Charge When Contract Was Renewed	\$44.29	\$44.29	\$46.44	0	\$44.29	\$41.83	\$53.41	\$53.41
Accumulated Monies Anita Paid to Sun	\$86	\$129	\$176.15	\$422.59	\$466.88	\$520.88	\$628.88	\$682.88
281 Day Period (9.3 months) Anita Paid \$422.59 for this \$200 '3 Time' Loan Flip								

Anita Benavides Continued	406-9 Contract 9 1/4/2006 \$253.23 6 Month Loan	406-10 Contract 10 3/29/2006 <u>\$301.51</u> 8 Month Loan	406-11 Contract 11 6/8/2006 \$301.51 8 Month Loan	406-12 Contract 12 8/16/2006 \$301.51 8 Month Loan	406-13 Contract 13 11/16/2006 \$301.51 8 Month Loan	406-14 Contract 14 2/26/2007 \$301.51 8 Month Loan	406-15 Contract 15 5/3/2007 <u>\$350.00</u> 8 Month Loan	406-16 Contract 16 7/20/2007 \$350.00 8 Month Loan
Finance Charge is All Fees ³	\$10 + \$60.77 = \$70.77	\$10 + \$96.48 = \$106.48	\$10 + \$96.48 = \$106.48	\$10 + \$96.48 = \$106.48	\$10 + \$96.48 = \$106.48	\$10 + \$96.48 = \$106.48	\$10 + \$112 = \$122	\$10 + \$112 = \$122
		Loan Amt and Charges Increased for this Loan					Loan Amt and Charges Increased for this Loan	
Contract Payment Amount	\$54	\$51	\$51	\$51	\$51	\$51	\$59	\$59
Payment Due Day	4 th	29 th	8 th	16 th	16 th	26 th	3 rd	20 th
# Days Before Loan Renewed	84 days	71 days	69 days	92 days	102 days	66 days	78 days	64 days
Payments Anita Made During This Contract Term	2/10 pymt \$54 – bal \$270 3/6 pymt \$54 – bal \$216	4/29 pymt \$51 – balance \$357 6/1 pymt \$51 – balance \$306	7/14 pymt \$51 – balance \$357 8/11 pymt \$51 – balance \$306	9/22 pymt \$51-bal \$357 10/20 pymt made \$51 – bal \$306	12/29 pymt \$51-bal \$357 1/26/07 pymt made \$51 – bal \$306 2/15 pymt made \$51 – bal \$255	3/23 pymt \$51 – bal \$357 4/30 pymt made \$51 – bal \$306	6/15 pymt \$69 – bal \$413 (\$10 late charge) 7/13 pymt \$59 – bal \$354	8/24 pymt \$59 – bal \$413 9/22 pymt \$59 – bal \$354
Total Payments Anita Made On This Contract	\$54 + \$54 = \$108	\$51 + \$51 = \$102	\$51 + \$51 = \$102	\$51 + \$51 = \$102	\$51 + \$51 + \$51 = \$153	\$51 + \$51 = \$102	\$69 + \$59 = \$128	\$59 + \$59 = \$118
The Amount of Money Sun Loan Retained for Acquisition Charge & Interest & Late Charge & Returned Check Charge When Contract Was Renewed	\$53.41	\$66.28	\$66.28	\$66.28	\$79.62	\$66.28	\$85.33	\$75.33
Accumulated Monies Anita Paid to Sun	\$790.88	\$892.88	\$994.88	\$1,096.88	\$1,249.88	\$1,351.88	\$1,479.88	\$1,597.88

Anita Benavides Continued	406-17 Contract 17 9/22/2007 \$350 8 Month Loan	406-18 Contract 18 12/03/2007 \$350 8 Month Loan	406-19 Contract 19 1/21/2008 <u>\$404.55</u> 8 Month Loan	406-20 Contract 20 4/18/2008 \$404.55 8 Month Loan	406-21 Contract 21 7/1/2008 <u>\$453.03</u> 8 Month Loan	406-22 Contract 22 9/6/2008 \$453.03 8 Month Loan	406-23 Contract 23 11/24/2008 \$453.03 8 Month Loan	406-24 Contract 24 1/27/2009 \$453.03 8 Month Loan
Finance Charge is All Fees ⁴	\$10 + \$112 = \$122	\$10 + \$112 = \$122	\$10 + \$129.45 = \$139.45	\$10 + \$129.45 = \$139.45	\$10 + \$144.97 = \$154.97	\$10 + \$144.97 = \$154.97	\$10 + \$144.97 = \$154.97	\$10 + \$144.97 = \$154.97
		NOTE: Only One Payment Made on This Loan						NOTE: Only One Payment Made on This Loan
Contract Payment Amount	\$59	\$59	\$68	\$68	\$76	\$76	\$76	\$76
Payment Due Date	22 nd	3 rd	21 st	18 th	1 st	6 th	24 th	27th
# Days Before Loan Renewed	72 Days	49 Days	88 Days	74 Days	67 Days	79 Days	64 Days	34 Days
Payments Anita Made During This Contract Term	11/2 pymt \$69 – bal \$413 (+\$10 late charge) 12/30 pymt \$59 – balance \$354	1/11 pymt \$60 – balance \$412	2/19 pymt \$68 – balance \$476 3/22 pymt \$68 – balance \$408	5/19 pymt \$68-bal \$476 6/18 pymt \$1 NOT A FULL PAYMENT 6/27 pymt made \$67 – bal \$408	8/5 pymt \$76-bal \$532 9/5 pymt made \$76 – bal \$456	10/6 pymt \$76 – bal \$532 11/5 pymt made \$76 – bal \$456	12/30 pymt \$76 – bal \$532 1/27 pymt \$29.57 – bal \$502.43 NOT A FULL PAYMENT	2/28 pymt \$76 – bal \$532
Total Payments Anita Made On This Contract	\$69 + \$59 = \$128	\$60	\$68 + \$68 = \$136	\$68 + \$1 + \$67 = \$136	\$76 + \$76 = \$152	\$76 + \$76 = \$152	\$76 + \$29.57 = \$105.57	\$76
The Amount of Money Sun Loan Retained for Acquisition Charge & Interest & Late Charge & Returned Check Charge When Contract Was Renewed	\$85.33	\$56.67	\$85.51	\$85.51	\$94.57	\$94.57	\$94.57	\$70.40
Accumulative Monies Anita Paid to Sun	\$1,725.88	\$1,785.88	\$1,921.88	\$2,057.88	\$2,209.88	\$2,361.88	\$2,467.45	\$2,543.45

Anita Benavides Continued	406-25 Contract 25 3/2/2009 \$542.86 10 Month Loan	406-26 Contract 26 5/8/2009 \$542.86 10 Month Loan	406-27 Contract 27 7/20/2009 \$542.86 10 Month Loan	406-28 Contract 28 10/9/2009 \$542.86 10 Month Loan	406-29 Contract 29 12/28/2009 \$542.86 10 Month Loan	406-30 Contract 30 2/22/2010 \$542.86 10 Month Loan	406-31 Contract 31 5/10/2010 \$542.86 10 Month Loan
Finance Charge is All Fees	\$10 + \$217.14 = \$227.14	\$10 + \$217.14 = \$227.14	\$10 + \$217.14 = \$227.14	\$10 + \$217.14 = \$227.14	\$10 + \$217.14 = \$227.14	\$10 + \$217.14 = \$227.14	\$10 + \$217.14 = \$227.14
Contract Payment Amount	\$77	\$77	\$77	\$77	\$77	\$77	\$77
Payment Due Date	2 nd	8 th	20 th	9 th	28 th	22 nd	10th
# Days Before Loan Renewed	67 Days	82 Days	81 Days	80 Days	56 Days	77 Days	300 Days
Payments Anita Made During This Contract Term	4/8 pymt \$77 – bal \$693 5/8 pymt \$51 – bal \$642 NOT A FULL PAYMENT	6/17 pymt \$77 – balance \$693 but the \$77 check is returned – RC charge \$30 – bal \$800 6/29 \$117 pymt & \$10 of that is late charge – bal \$693 7/20 \$87 pymt & \$10 of that is late charge – bal \$616	9/11 pymt \$106.01 & \$10 of that is late pay – balance \$673.99 10/9 pymt \$87 & \$10 of that is late pay – balance \$596.99	11/20 pymt \$87 & \$10 of that is late pay – balance \$693 12/18 pymt made \$77 – bal \$616	2/1/10 pymt \$77-bal \$693 2/22 pymt made \$20 – bal \$673 NOT A FULL PAYMENT	4/9 pymt \$87 & \$10 of that is late pay – balance \$693 4/30 pymt made \$77 – bal \$616 The \$77 check is returned - \$30 RC – bal \$723 5/10 pymt \$77 & \$14 pymt – bal \$642	
Total Payments Anita Made On This Contract	\$77 + \$51 = \$128	\$77 - \$77 + \$117 + 87 = \$204	\$106.01 + \$87 = \$193.10	\$87 + \$77 = \$164	\$77 + \$20 = \$97	\$87 + \$77 - \$77 + \$77 + \$14 = \$178	
The Amount of Money Sun Loan Retained for Acquisition Charge & Interest & Late Charge & Returned Check Charge When Contract Was Renewed	\$116.60	\$166.60	\$136.60	\$126.60	\$85	\$156.60	
Accumulative Monies Anita Paid to Sun	\$2,671.45	\$2,875.45	\$3,068.55	\$3,232.55	\$3,329.55	\$3,507.55	

ADRIAN BENAVIDES CONTRACTS (ACCOUNT 520: CONTRACTS 1-27)

61. In or about **August 5, 2004**, Adrian Benavides (hereinafter "Adrian") did an application by telephone with Norma Martinez, the manager at the Sun Loan Alice storefront and he requested \$520.00 for school funds. Ms. Martinez took all of Adrian personal and financial particulars, including all telephone numbers and a list of references for application purposes. After said application, Ms. Martinez told Adrian that Sun Loan would loan him \$301.62. See application, attached hereto as **Exhibit 33** and incorporated herein by reference. Adrian agreed to accept the \$301.62 loan from Sun Loan and the parties executed a Note, **Contract 1**. The terms of the loan were to repay \$384.00, which included an acquisition fee of \$10.00 and an installment handling fee of \$72.38, by making payments of \$64.00 for 6 months beginning 9/5/04. Ms. Martinez did not explain the fees or the contract to Adrian as, even to date, Ms. Martinez has no idea what these fees mean or what fees are allowed under the Texas Finance Code for any loans offered by Sun Loans or most of the verbiage on the contract. See attached Note, **Exhibit 34**, and incorporated herein by reference. When Adrian was only one day late with his payment, he was harassed both at home and the office to come in and make his payment. Seventy days into the loan, with Adrian having made only the one payment, which was barely sufficient to cover the monies due Sun Loan⁶, Ms. Martinez coerced Adrian into signing a new Note, even though even though he obtained no benefit by signing a new loan and instead only obligated himself unknowingly to more out of pocket fees and even though he received no "cash advance" as is required under the Code.

⁶ Adrian had made one \$64 payment and the monies due to Sun Loan for the acquisition charge and interest at the point of the renewal was \$62.70.

62. On **October 14, 2004**, a new Note, **Contract 2**, was executed which again obligated Adrian to pay \$384.00, including another \$10.00 acquisition charge and another \$72.38 installment handling charge. The day due on the loan changed from the 5th to the 14th. See Note, **Exhibit 35**, attached hereto and incorporated herein by reference. Under this Note, Adrian made one payment and was harassed daily at every available telephone number. When Adrian did not return their calls, they started calling his personal references and disclosing to these third parties that he owed a debt and needed to come in and pay. When Adrian's second payment became due and Adrian could not pay, Sun Loan harassed Adrian until he came in and signed a new loan agreement. This was 67 days into this contract and again, like with Contract 1, there was barely enough in Adrian's account to pay the Sun Loan fees. At this point, Adrian has made total payments of \$131.20 – has made no payments on time – and was more than thirty days past due on two contracts.

63. On **December 20, 2004**, a new Note, **Contract 3**, was executed which again obligated Adrian to pay \$384.00, including another \$10.00 acquisition charge and another \$72.38 installment handling charge. The day due on the loan changed from the 14th to the 20th. See Note, **Exhibit 36**, attached hereto and incorporated herein by reference. Under this loan, Adrian made three payments and none of them by the day due. One day past the due date, for each payment, Sun Loan called Adrian at home and at work repeatedly and when they could not reach him, they started calling his personal references and disclosing to these third parties that he owed a debt and needed to come in and pay. On March 25, 2005, after Adrian had made the three payments, albeit late, BMC sent an advertisement to Adrian, via US Mail, in an attempt

to get him to renew his loan before his contract was completed. Adrian did come back in two days before his next due date and renewed his loan – this was 119 days into his current loan. At this point, Adrian has made total payments of \$226.40 – and has made no payments on time.

64. On **April 18, 2005**, a new Note, **Contract 4**, was executed which again obligated Adrian to pay \$384.00, including another \$10.00 acquisition charge and another \$72.38 installment handling charge. The day due on the loan changed from the 20th to the 18th. See Note, **Exhibit 37**, attached hereto and incorporated herein by reference. Under this Note, Adrian made two payments and was harassed daily at every available telephone number – the calls starting whenever he was one day late on any payment. On June 17, one day before his payment due date for his second payment, Sun Loan contacted Adrian and advised him to come in and make his payment and that his loan needed to be renewed. Adrian was only in this loan for 60 days. At this point, Adrian has made total payments of \$354.40 – none of his contracts and have been allowed to expire – and the principal owing on his loan has not decreased by even a cent.

65. On **June 17, 2005**, a new Note, **Contract 5**, was executed which again obligated Adrian to pay \$384.00, including another \$10.00 acquisition charge and another \$72.38 installment handling charge. The day due on the loan changed from the 18th to the 17th. See Note, **Exhibit 38**, attached hereto and incorporated herein by reference. Under this Note, Adrian made only one payment and before the second payment was due, he was coerced into coming back in for another renewal. Adrian had only been in this contract for 47 days – a payment was not even due – he had four months left in the contract - and the monies in his account was barely sufficient enough to satisfy Sun acquisition

charge and interest – which is why Sun Loan is increasing the principal amount due on the new loan by \$102.93. Still it had not been explained to Adrian by Sun Loan that, for each renewal he was entering into, Adrian was obligating himself to more fees and no monies were being applied to the principal due on his loan. At this point, Adrian has made total payments of \$418.40.

66. On **August 3, 2005**, a new Note, **Contract 6**, was executed obligating Adrian to paying an increased loan balance of \$544.00. The length of the term has increased from six months to eight months. The payments have increased from \$64 to \$68, the interest has increased to \$129.45, and the day due on the loan changed from the 17th to the 3rd. See Note, **Exhibit 39**, attached hereto and incorporated herein by reference. Under this loan, Adrian made three payments. Interspersed between Adrian's payments, i.e., on October 7, 2005 and November 7, 2005, BMC sent Adrian, via US Mail, solicitations in an attempt to get him to renew his loan before his contract was completed. When Adrian was in making his third payment, he consented once again to a renewal. At this point, Adrian has made total payments of \$622.40 – not a penny of which has been applied to the principal of his loan.

67. On **November 18, 2005**, a new Note, **Contract 7**, was executed which again obligated Adrian to the original balance loan of \$404.55 to be paid at \$68.00 for 8 months (beginning 12/18/05) for a total of \$544.00 and Sun Loan charged Adrian another \$10.00 acquisition charge and another \$129.45 installment handling charge. The due day has changed from the 3rd to the 18th. See Note, **Exhibit 40**, attached hereto and incorporated herein by reference. Adrian makes three payments on this loan – all late – all involving multiple phone calls from Sun Loan to Adrian. Three days

before the next payment on the loan is due, Adrian comes in and renews the loan. At this point, Adrian has made total payments of \$826.40.

68. On **March 15, 2006**, a new Note, **Contract 8**, was executed which again obligated Adrian to pay \$544.00, including another \$10.00 acquisition charge and another \$129.45 installment handling charge. The due day has changed from the 18th to the 15th. See Note, **Exhibit 41**, attached hereto and incorporated herein by reference. Under this loan, Adrian made two payments, both late. On the same date that Adrian was making payment two, i.e, May 19, 2006, BMC sent Adrian, via US Mail, a solicitation in an attempt to get him to renew his loan before his contract was completed. Once again, neither the storefront employees or BMC is advising Adrian that he is obligating himself to more fees and that none of his payments are paying down the principal on his loan. Adrian agreed to come back in and sign another contract, even though his current contract had not expired. At this point, Adrian has made total payments of \$962.40.

69. On **June 9, 2006**, a new Note, **Contract 9**, was executed which again obligated Adrian to pay \$544.00, including another \$10.00 acquisition charge and another \$129.45 installment handling charge. The due day has changed from the 15th to the 9th. See Note, **Exhibit 42**, attached hereto and incorporated herein by reference. Under this loan, Adrian made three payments – none on time thus resulting in a multitude of calls between Sun Loan Alice and Adrian. After Adrian made his second payment, and when he was late, Sun Loan called Adrian at home and at work repeatedly. On August 14, 2006, after Adrian had made his first payment, BMC sent Adrian, via US Mail, a solicitation in an attempt to get him to renew his loan before his contract was completed.

Likewise, on September 12, 2006, after Adrian had made his second payment, BMC sent Adrian, via US Mail, a solicitation in an attempt to get him to renew his loan before his contract was completed. Adrian returned to the storefront three days after the BMC solicitation letter was sent out, but only 98 days into the contract, and renewed his loan. At this point, Adrian has made total payments of \$1,166.40.

70. On **September 15, 2006**, a new Note, **Contract 10**, was executed which again obligated Adrian to pay \$544.00, including another \$10.00 acquisition charge and another \$129.45 installment handling charge. The due day has changed from the 9th to the 15th. See Note, **Exhibit 43**, attached hereto and incorporated herein by reference. Under this Note, Adrian made only one payment. When his second due date came, Adrian came into the office without the funds to pay. At that point, even though there was scarcely enough monies in Adrian's account to cover Sun Loan's acquisition charge and current interest on the loan, Sun Loan flipped Adrian into a new loan – increasing the amount of the loan by \$139.39. At this point, Adrian has made total payments of \$1,234.40.

71. On **November 14, 2006**, a new Note, **Contract 11**, was executed which now obligated Adrian to a loan of \$543.94 to be paid at \$91.00 for 8 months (beginning 12/14/06) for a total of \$728.00 and Sun Loan charged Adrian another \$10.00 acquisition charge and a \$174.06 installment handling charge. The day due on the loan changed from the 15th to the 14th. See Note, **Exhibit 44**, attached hereto and incorporated herein by reference. Adrian made three payments – all late – but still BMC solicited him twice, via US Mail, on February 8, 2007 and February 15, 2007 in an attempt to get him to renew his loan. When Adrian is 107 days into this 240 day

contract, after the second mail solicitation, he comes into the Sun Loan Alice storefront and renews his loan. At this point, Adrian has made total payments of \$1,507.40 – yet, Sun Loan has never been out of pocket more than \$301.62 – and Adrian still owes Sun Loan \$728.

72. On **March 1, 2007**, a new Note, **Contract 12**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 14th to the 1st. See Note, **Exhibit 45**, attached hereto and incorporated herein by reference (Adrian made two payments while he was in this contract – both late). Sixty four days into the contract, Adrian comes in to make his second payment and is pressured again into renewing his contract – even though he is current and there are six months left in the contract. At this point, Adrian has made total payments of \$1,689.40.

73. On **May 4, 2007**, a new Note, **Contract 13**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 1st to the 4th. See Note, **Exhibit 46**, attached hereto and incorporated herein by reference. Under this Note, Adrian made two payments – both late. When Adrian was in the office making his second payment, he again was strong-armed into renewing the loan even though he had only been in this loan for 70 days and the current contract had almost six months remaining. At this point, Adrian has made total payments of \$1,881.40.

74. On **July 13, 2007**, a new Note, **Contract 14**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 4th to

the 13th. See Note, **Exhibit 47**, attached hereto and incorporated herein by reference. Under this Note, Adrian made two payments and was harassed daily at every available telephone number until he promised to come in and make those payments – payment one was eleven days late and payment two was nine days late. When Adrian came in to make the second payment, even though he is only 69 days into the contract, he is talked into renewing again. Still it is not explained to him that he is obligating himself to more fees by the signing of these continuous agreements and the only ‘winner’ in these renewals is Sun Loan. At this point, Adrian has made total payments of \$2,073.40.

75. On **September 22, 2007**, a new Note, **Contract 15**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 13th to the 22nd. See Note, **Exhibit 48**, attached hereto and incorporated herein by reference. As soon as Adrian misses the first payment, the calls start and continue. Adrian explains to them that he has no money but the calls continue to his home, office, cell until he finally states that he can make the payment on November 2 – eleven days late and a multitude of phone calls later. When Adrian came into the storefront to make his second payment, nine days late, he was forced into renewing this contract that he had been in for 69 days. At this point, Adrian has made total payments of \$2,265.40.

76. On **November 30, 2007**, a new Note, **Contract 16**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 22nd to the 30th. See Note, **Exhibit 49**, attached hereto and incorporated herein by reference. Under this loan, Adrian made four payments. The first two payments were

just a few days late, so on February 2, 2008, March 3, 2008 and April 3, 2008, BMC, rather than Sun Loan Alice, sent Adrian, via US Mail, solicitations in an attempt to get him to renew his loan before his contract was completed. Before the sixth payment was due and 138 days into the contract, Adrian is back in the storefront renewing his loan. At this point, Adrian has made total payments of \$2,639.40.

77. On **April 16, 2008**, a new Note, **Contract 17**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 30th to the 16th. See Note, **Exhibit 50**, attached hereto and incorporated herein by reference. Under this Note, Adrian made two payments – both late. In July, Sun Loan told Adrian it was time to renew his loan and Adrian agreed to come back in and sign another contract, even though he had been in his current contract only 72 days. At this point, Adrian has made total payments of \$2,831.40 – yet the principal on his loan has never decreased and instead has increased by \$242.32.

78. On **July 5, 2008**, a new Note, **Contract 18**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 15th to the 5th. See Note, **Exhibit 51**, attached hereto and incorporated herein by reference. Under this Note, Adrian made two payments, both several days late, and was harassed daily at every available telephone number until he presented the payment. When Adrian came into the storefront to make his second payment, even though he had only been in the contract for sixty five days, Sun Loan told Adrian it was time to renew his loan and that renewal did take place. At this point, Adrian has made total payments of \$3,013.40.

79. On **September 6, 2008**, a new Note, **Contract 19**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 5th to the 6th. See Note, **Exhibit 52**, attached hereto and incorporated herein by reference. Under this loan, Adrian made three timely payments and on November 29, 2008, BMC sent Adrian, via US Mail, a solicitation in an attempt to get him to renew his loan before his contract was completed. Due to this solicitation, Adrian did come back in and sign another contract, even though he had only been in his current contract for 88 days and the contract wouldn't expire for another five months. At this point, Adrian has made total payments of \$3,286.40.

80. On **December 12, 2008**, a new Note, **Contract 20**, was executed which again obligated Adrian to pay \$728.00, including another \$10.00 acquisition charge and another \$174.06 installment handling charge. The due day has changed from the 6th to the 12th. See Note, **Exhibit 52**, attached hereto and incorporated herein by reference. Under this Note, Adrian made two payments. In February, only seventy four days into this contract, Sun Loan told Adrian it was time to renew his loan and enticed him by telling him he could get some of his payment money back if he agreed to let them increase the principal amount of the loan \$153.53. They told him the payment amount would only increase \$2 – no one mentioned that he was committing himself to an eleven month loan rather than a eight month loan and that the interest due would increase from \$174.06 to \$309.52. Adrian signed the renewal. At this point, Adrian has made total payments of \$3,468.40.

81. On **February 20, 2009**, a new Note, **Contract 21**, was executed which now obligated Adrian to \$1,022.99, including another \$10.00 acquisition charge and a \$309.52 installment handling charge, to paid at \$93.00 for 11 months (beginning 3/20/09). The day due changes from the 12th to the 20th. See Note, **Exhibit 53**, attached hereto and incorporated herein by reference. When the first payment was one day past due, on March 21, 2009, BMC send a third party debt collection letter on behalf of the Alice office. Adrian made two payments on this contract, one four days past due and one one day past due. When Adrian was in the storefront making his second payment, which would be 67 days into the current contract, he was coerced into yet another renewal. At this point, Adrian has made total payments of \$3,654.40.

82. On **April 21, 2009**, a new Note, **Contract 22**, was executed which again obligated Adrian to pay \$1,022.99, including another \$10.00 acquisition charge and another \$309.52 installment handling charge. The due day has changed from the 20th to the 21st. See Note, Exhibit 54, attached hereto and incorporated herein by reference. Under this loan, Adrian made two payments, both late but within ten days of the due date. On June 22, 2009, when Adrian was one day late on his second payment, BMC sent him a third party debt collection letter on behalf of the Alice storefront. When Adrian came in to make his second payment, 79 days into the contract, it was explained to Adrian that it was time to renew his loan even though the current loan still had over seven months remaining. Adrian signed the renewal. At this point, Adrian has made total payments of \$3,840.40.

83. On **June 29, 2009**, a new Note, **Contract 23**, was executed which again obligated Adrian to pay \$1,022.99, including another \$10.00 acquisition charge and

another \$309.52 installment handling charge. The due day has changed from the 21st to the 29th. See Note, **Exhibit 55**, attached hereto and incorporated herein by reference. On July 30, 2009, when Adrian was one day past due making his first payment, BMC sent a third party debt collection letter on behalf of the Alice storefront. In June, when Adrian came to the office to make his second payment, when he had been in the current contract for only 64 days, it was explained to him that it was time to renew his loan. There was no explanation given to Adrian as to how the signing of these continuous agreements was favorable only to Sun Loan. Adrian signed the renewal. At this point, Adrian has made total payments of \$4,013.40.

84. On **September 4, 2009**, a new Note, **Contract 24**, was executed which again obligated Adrian to pay \$1,022.99, including another \$10.00 acquisition charge and another \$309.52 installment handling charge. The due day has changed from the 29th to the 4th. See Note, **Exhibit 56**, attached hereto and incorporated herein by reference. On November 27, 2009, BMC sent Adrian, via US Mail, a solicitation in an attempt to get him to renew his loan before his contract was completed. After receipt of that letter, Adrian came in on December 2, 2009 and signed yet another renewal. At this point, Adrian has made total payments of \$4,219.40.

85. On **December 2, 2009**, a new Note, **Contract 25**, was executed which again obligated Adrian to pay \$1,022.99, including another \$10.00 acquisition charge and another \$309.52 installment handling charge. The due day has changed from the 4th to the 2nd. See Note, **Exhibit 57**, attached hereto and incorporated herein by reference. Under this loan, Adrian made two payments – both late – one more than ten days late. Regardless, on January 26, 2010, BMC sent to Adrian, via US Mail, a solicitation in an

attempt to get him to renew his loan before his contract was completed. Only eighty two days into this contract, Adrian then did come in renew. At this point, Adrian has made total payments of \$4,415.40.

86. On **February 22, 2010**, a new Note, **Contract 26**, was executed which again obligated Adrian to pay \$1,022.99, including another \$10.00 acquisition charge and another \$309.52 installment handling charge. The due day has changed from the 2nd to the 22nd. See Note, **Exhibit 58**, attached hereto and incorporated herein by reference. Adrian made his first payment eighteen days past due and was assessed a \$10 late charge. On March 27, when Adrian was past due on his second payment, third party debt collector BMC sent him a collection letter on behalf of the Sun Loan Alice storefront. During the entire time that Adrian was in this contract, he was receiving a multitude of calls to his home, office, cell, and all his relatives, i.e. his references, were receiving multiple calls. Regardless, five days after Adrian made his second payment eight days past due, on April 15, 2010, BMC sent Adrian a promotional letter the purpose of which was to solicit him to come back in and renew his loan. After a phone call from the office inviting Adrian back in on May 10, 2010, twelve days before his next payment was due and only seventy seven days into this eleven month contract, a new proposition was made to Adrian to renew his loan. At that time, Adrian's account had in it slightly more than was needed to satisfy Sun Loan's acquisition charge and current interest due. Adrian had rightly not had a \$10 late charge assessed him when he made his April 30th payment – but now the office is reversing out that April 30 \$93 payment and reapplying it on May 10. By reapplying it on May 10, now the payment would be past due and deserving of a \$10 late charge - \$10 more in Sun Loan's coffers. At no

point is Sun Loan explaining to Adrian that there was absolutely no benefit to Adrian by the signing of these continuous agreements. On this contract alone, Adrian has paid \$196 in payments and Sun Loan is retaining \$170.69 of that to cover their acquisition charge and interest. At this point, Adrian has made total payments of \$4,611.40 – the most Sun Loan was ever been out of pocket was for \$301.62.

87. On **May 10, 2010**, a new Note, **Contract 27**, was executed which again obligated Adrian to pay \$1,022.99, including another \$10.00 acquisition charge and another \$309.52 installment handling charge. The due day has changed from the 22nd to the 10th. See Note, **Exhibit 59**, attached hereto and incorporated herein by reference. This was the last Note entered between Adrian and Sun Loans. Adrian made no payments during the eleven month duration of this contract. Sun Loan made nineteen calls to his residence, forty eight calls to his cell phone, seventeen calls to ‘nearby’ cell, nine calls to Adrian’s father and two calls to Adrian’s sister-in-law. In addition, storefront employees came to his house twice – the visits just a week apart. It was during this period of intense harassment that Adrian obtained representation.

88. TABLE OF ADRIAN’S LOANS (LOAN 1 – 27)

Adrian Benavides	520-1 Contract 1 8/5/04 \$301.62 6 Month Loan	520-2 Contract 2 10/14/04 \$301.62 6 Month Loan	520-3 Contract 3 12/20/04 \$301.62 6 Month Loan	520-4 Contract 4 4/18/05 \$301.62 6 Month Loan	520-5 Contract 5 6/17/05 \$301.62 6 Month Loan	520-6 Contract 6 8/3/05 <u>\$404.55</u> 8 Month Loan	520-7 Contract 7 11/18/05 \$404.55 8 Month Loan	520-8 Contract 8 3/15/05 \$404.55 8 Month Loan
Finance Charge is All Fees	\$10 +72.38 = \$82.38	\$10 +72.38 = \$82.38	\$10 +72.38 = \$82.38	\$10 +72.38 = \$82.38	\$10 +72.38 = \$82.38	\$10 + \$129.45 = \$139.45	\$10 + \$129.45 = \$139.45	\$10 + \$129.45 = \$139.45
	NOTE: Only One Payment Made	NOTE: Only One Payment Made			NOTE: Only One Payment Made	Note: Increase in Amount Loaned		
Contract Payment Amount	\$64	\$64	\$64	\$64	\$64	\$68	\$68	\$68
Payment Due Date	5 th	14 th	20 th	18th	17th	3rd	18 th	15th
# Days Before Loan Renewed	70 days	67 days	119 days	60 days	47 days	107 days	117 days	86 days
Payments Adrian Made During This Contract Term	9/10 \$64 payment	12/3 \$67 (\$64 + \$3.20 LC)	1/31 \$67.20 (\$64 + \$3.20 LC) 2/25 \$64 3/10 \$64 3 pymt	5/20 \$64 6/17 \$64	7/15 \$64	9/9 \$68 10/7 \$68 11/7 \$68	12/20 \$68 1/27 \$68 2/21 \$68	4/24 \$68 5/19 \$68
Total Payments Adrian Made on This Contract	\$64	\$67.20	\$67.20 + \$64 + \$64 = \$195.20	\$64 + \$64 = \$128	\$64	\$68 + \$68 + \$68 = \$204	\$68 + \$68 + \$68 = \$204	\$68 + \$68 = \$136
The Amount of Money Sun Loan Retained for Acquisition Charge & Interest & Late Charge & Returned Check Charge When Contract was Renewed	\$62.70	\$65.90	\$75.24	\$47.91	\$47.91	\$103.49	\$103.49	\$85.51
Accumulated Monies Adrian Paid to Sun Loan	\$64	\$131.20	\$226.40	\$354.40	\$418.40	\$622.40	\$826.40	\$962.40

Adrian Benevides Continued	520-9 Contract 9 6/9/06 \$404.55 8 Month Loan	520-10 Contract 10 9/15/06 \$404.55 8 Month Loan	520-11 Contract 11 11/14/06 <u>\$543.94</u> 8 Month Loan	520-12 Contract 12 3/1/07 \$543.94 8 Month Loan	520-13 Contract 13 5/4/07 \$543.94 8 Month Loan	520-14 Contract 14 7/13/07 \$543.94 8 Month Loan	520-15 Contract 15 9/22/07 \$543.94 8 Month Loan	520-16 Contract 16 11/30/07 \$543.94 8 Month Loan
Finance Charge is All Fees	\$10 + \$129.45 = \$139.45	\$10 + \$129.45 = \$139.45	\$10 + \$174.06 = \$184.06	\$10 + \$174.06 = \$184.06	\$10 + \$174.06 = \$184.06	\$10 + \$174.06 = \$184.06	\$10 + \$174.06 = \$184.06	\$10 + \$174.06 = \$184.06
		NOTE: Only One Payment Made						
Contract Payment Amount	\$68	\$68	<u>\$91</u>	\$91	\$91	\$91	\$91	\$91
Payment Due Day	9 th	15 th	14 th	1 st	4 th	13 th	22 nd	30 th
# Days Before Loan Renewed	98	60	107	64	70	71	69	138
Payments Adrian Made During This Contract	7/14 \$68 8/11 \$68 9/11 \$68	10/20 \$68	12/29 \$91 1/26 \$101 (\$91 + \$10 LC) 2/15 \$81	4/7 \$91 5/4 \$91	6/15 \$101 (\$91 + \$10 LC) 7/13 \$91	8/24 \$101 (\$91 + \$10 LC) 9/22 \$91	11/02 \$101 (\$91 + \$10 LC) 11/30 \$91	1/11 \$101 (\$91 + \$10 LC) 2/1 \$91 2/19 \$91 3/22 \$91
Total Payments Adrian Made on this Contract	\$68 + \$68 +\$68 = \$204	\$68	\$91 + \$101 + \$81 = \$273	\$91 + \$91 = \$182	\$101 + 91 = \$192	\$101 + 91 = \$192	\$101 + \$91 = \$192	\$101 + \$91 + \$91 +\$91 = \$374
The Amount of Money Sun Loan Retained for Acquisition Charge & Interest & Late Charge & Returned Check Charge When Contract was Renewed	\$103.49	\$63.94	\$145.71	\$111.53	\$121.53	\$121.53	\$121.53	\$165.05
Accumulated Monies Adrian Paid to Sun	\$1,166.40	\$1,234.40	\$1,507.40	\$1,689.40	\$1,881.40	\$2,073.40	\$2,265.40	\$2,639.40

Adrian Benevides Continued	520-17 Contract 17 4/16/08 \$543.94 8 Month Loan	520-18 Contract 18 7/5/08 \$543.94 8 Month Loan	520-19 Contract 19 9/6/08 \$543.94 8 Month Loan	520-20 Contract 20 12/12/08 \$543.94 8 Month Loan	520-21 Contract 21 2/20/09 \$703.47 11 Month Loan	520-22 Contract 22 4/21/09 \$703.57 11 Month Loan	520-23 Contract 23 6/29/09 \$703.57 11 Month Loan	520-24 Contract 24 9/4/09 \$703.57 11 Month Loan
Finance Charge is All Fees ⁷	\$10 + \$174.06 = \$184.06	\$10 + \$174.06 = \$184.06	\$10 + \$174.06 = \$184.06	\$10 + \$174.06 = \$184.06	\$10 + \$309.52 = \$319.52	\$10 + \$309.52 = \$319.52	\$10 + \$309.52 = \$319.52	\$10 + \$309.52 = \$319.52
							Note: Second Payment Was Not a Full Payment	
Contract Payment Amount	\$91	\$91	\$91	\$91	\$93	\$93	\$93	\$93
Payment Due Date	16 th	5 th	6 th	12 th	20 th	21 st	29 th	4 th
# Days Before Loan Renewed	72	65	88	74	67	79	64	34
Payments Adrian Made During This Contract	5/19 \$91 6/27 \$101 (\$91 + \$10 LC)	8/9 \$91 9/5 \$91	10/6 \$91 11/5 \$91 12/3 \$91	1/13 \$91 2/10 \$91	3/24 \$93 4/21 \$93	5/30 \$93 6/29 \$93	8/14 \$103 (\$93 + \$10 LC) 9/4 \$70	10/23 \$103 (\$93 + \$10 LC) 11/20 \$103 (\$93 + \$10 LC)
Total Payments Adrian Made on this Contract	\$91 + \$101 = \$192	\$91 + \$91 = \$182	\$91 + \$91 + \$91 = \$273	\$91 + \$91 = \$182	\$93 + \$93 = \$186	\$93 + \$93 = \$186	\$103 + \$70 = \$173	\$103 + \$103 = \$206
The Amount of Money Sun Loan Retained for Acquisition Charge & Interest & Late Charge & Returned Check Charge When Contract was Renewed	\$121.53	\$111.53	\$135.71	\$111.53	\$150.69	\$150.69	\$160.69	\$170.69
Accumulated Monies Adrian Paid to Sun	\$2,831.40	\$3,013.40	\$3,286.40	\$3,468.40	\$3,654.40	\$3,840.40	\$4,013.40	\$4,219.40

Adrian Benevides Continued	520-25 Contract 25 12/2/09 \$703.47 11 Month Loan	520-26 Contract 26 2/22/10 \$703.47 11 Month Loan	520-27 Contract 27 5/10/10 \$703.47 11 Month Loan
Finance Charge is All Fees	\$10 + \$309.52 = \$319.52	\$10 + \$309.52 = \$319.52	\$10 + \$309.52 = \$319.52
		Third Payment Was Not A Full Payment	
Contract Payment Amount	\$93	\$93	\$93
Payment Due Date	2 nd	22 nd	10th
# Days Before Loan Renewed	82	77	Not renewed
Payments Adrian Made During This Contract	1/15 \$103 (\$93 + \$10 LC) 2/12 \$93	4/9 \$103 (\$93 + \$10 LC) 4/30 \$93 (This payment was 'backed out' on 5/10) 5/10 \$93 (\$83 + \$10LC)	
Total Payments Adrian Made on this Contract	\$103 + \$93 = \$196	\$103 + \$93 - \$93 + \$93 = \$196	
The Amount of Money Sun Loan Retained for Acquisition Charge & Interest & Late Charge & Returned Check Charge When Contract was Renewed	\$160.69	\$170.69	Entire \$309.52 + \$10 charged \$319.52
Accumulated Monies Adrian Paid to Sun	\$4,415.40	\$4,611.40	

ATTORNEY REPRESENTATION AND FINAL COLLECTION EFFORTS

89. On June 9, 2010, the Iniguez Law Firm PC (hereinafter "Iniguez") sent Sun Loan two letters of representation, one for Adrian and one for Anita. Both letters contained a notice of dispute, a request for verification and notice of cease and desist contacting Anita and Adrian both at their home and places of employment. See attorney letters, **Exhibit 60**, incorporated herein by reference.

90. Regardless of said notification from Iniguez, verification was not received, the notice of representation was ignored and Sun Loan Alice, BMC and Doherty continued debt collections on these accounts. Specifically,

- a. On June 11, 2010, Sun Loan called Plaintiffs directly at home four (4) times;
- b. On June 12, 2010, Sun Loan called Anita at home, at work and on her cell phone; additionally, they call Adrian at home, at work, and on his cell phone;
- c. On June 14, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice;
- d. On June 15, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice and the BMC mailed debt collection letters to each Anita and Adrian;
- e. On June 16, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice;
- f. On June 17, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice. On this date, the Plaintiffs called back into Sun Loan and explained they had counsel, how

to reach that counsel and to cease and desists contacting them directly, but Jennifer Benavides responded she would keep calling until they paid.

g. On June 21, 2010, Sun Loan called the Plaintiffs and the Plaintiffs reminded Sun Loan again that they had counsel, how to reach that counsel and to cease and desists contacting them, but Jennifer Benavides again replied she would keep calling until they paid.

h. On June 22, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones;

i. On June 23, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones;

j. On June 24, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice;

k. On June 25, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice;

l. On June 26, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice;

m. On June 28, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones, then called Adrian's father and disclosed to him that Adrian owed a debt and needed to come in and make a payment. Adrian's father told them not to call him again;

n. On June 29, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones. They then called Melva Hernandez,

Anita's sister, and disclosed to her that Adrian and Anita owed a debt and needed to come in and pay. Ms. Hernandez asked them not to call her again;

o. On June 30, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice;

p. On July 1, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones, then called Adrian's father but Adrian's mother, Maria Benavides, took the call and told them to not call there again. Ms. Benavides told the caller they were being rude and they threatened her they would keep calling until Adrian and Anita came in and paid their debts. Ms. Benavides could not get them off the phone, she had to disconnect the call.

q. On July 2, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones and called a relative's cell phone twice;

r. On July 6, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones, then they proceeded to re-call Adrian's father again, even though they had been asked not to call there again. They then called Melva Hernandez, Anita's sister, and disclosed information regarding the debts even though Ms. Hernandez had asked them previously not to call her again;

s. On July 7, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones, then they proceeded to re-call Adrian's father again, even though they had been told not to call there again. Following that, Sun Loan Alice employee Jennifer Benavides drove to the Plaintiff's home - when no one answered the door, Ms. Benavides posted debt collection notes on their fence.

t. On July 8, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones, then they proceeded to re-call Adrian's father again even though they had been told not to call there again. Adrian's mother, Melva Hernandez, answered the phone and she reminded them that she had previously asked them to not call their home again – the caller responded that they would continue calling until Adrian and Anita came in and paid.

u. On July 9, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones, then they proceeded to re-call Adrian's father again even though they had been told multiple times not to call there. Then Sun Loan called Elizabeth Gomez, Anita's sister, who told them to stop calling and they replied they would not until Adrian and Anita came in and paid.

v. On July 10, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones;

w. On July 12, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones, then they proceeded to re-call Adrian's father again even though they had been told not to call there. Then Sun Loan, regardless of the fact that she specifically asked them not to call her again, called Elizabeth Gomez, Anita's sister. Ms. Gomez told them again to stop calling her – the storefront employee replied that they would not stop until Adrian and Anita came in and paid.

91. Plaintiffs' counsel Iniguez, fed up with these contacts and violations, sent Sun Loan a letter on July 12, 2010, regarding violations and presenting an opportunity to cure before the filing of a lawsuit. See attorney letter **Exhibit 61**, attached hereto and

incorporated herein by reference. Sun Loan completely ignored the letter and continued collections, specifically,

a. On July 13, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones, then they called Adrian's father again even though they had been told not to call there;

b. On July 14, 2010, Sun Loan called Plaintiffs at home four times, Anita and Adrian both at work and on their cell phones then they proceeded to re-call Adrian's father again even though they had been told not to call there. Then they called Anita and Anita reiterated again that they had counsel, how to reach that counsel and to cease and desist calling her and her husband – Sun Loan replied that they would keep calling until they were paid. On that same call, Norma Martinez told Anita they would be going to Adrian's work tomorrow, wherein, Anita told them that Adrian would be fired if they appeared at her husband's work, Norma said "we don't care", pay us and we will leave you alone". Norma threatened Anita that they would also start calling her father-in-law's number again in the morning because they knew how much it upset her mother-in-law Maria. Even though she had just spoken to Anita on the phone, Norma was not to be deterred by Anita's comments and she proceeded to drive to the Plaintiffs' home. With Anita and her daughter-in-law at the front door, Norma stated, "what happened?, you are three months behind" (even though Anita was barely two months past due). Anita told Norma again to leave her alone and call her attorney. Norma stated that they would not be contacting Anita's attorney as 'there are a lot of scammers out there that say they are attorneys when they are not - your attorney is probably one of those so we do not intend to contact Iniguez'. Norma finally left the property saying she was on her

way to Adrian's job to demand payments. Additionally, Norma told Anita that until either the Plaintiffs or Iniguez paid the loan they would keep coming by the house and Adrian's job to collect.

c. On July 15, 2010, Sun Loan called Anita's cell phone again and Anita again told them to contact her attorney Iniguez and told them how to reach Iniguez;

d. On July 16, 2010, Sun Loan called Plaintiffs at home four times, at work and on their cell phones;

e. On July 17, 2010, Sun Loan called Plaintiffs at home four times, at work and on their cell phones;

f. On July 19, 2010, Sun Loan called Plaintiffs at home four times, at work and on their cell phones. Additionally, they called Adrian's father again even though they had been told not to call there. Then they proceeded to call Hilda Benavides, also a relative, who explained to them that she could not have these calls to her house. But despite her asking them again to cease calling her – they said the calls would continue until Anita and Adrian made their payments.

g. On July 20, 2010, Sun Loan called Plaintiffs at home four times, then at work and on their cell phones, then they proceeded to re-call Adrian's father again even though they had been told not to call there;

92. On July 27, 2010, Hugh Doherty of BMC, on Brundage Management Company letterhead, sent a response to Iniguez's request for verification and cease and desist letter. In this letter, Mr. Doherty speaks about the Plaintiffs' 'Sun Loan Company accounts' – he states that 'Sun Loan Company' does not employ a third party debt collector - that 'Sun Loan Company' is a first party lender – he speaks of Ms. Norma

Martinez as a manager of our 'Sun Loan Office in Alice'. Yet, he solicits a 'plan for a payment option or settlement' – clearly making this a debt collection letter by a third party to collect on behalf of Sun Loan Alice. See letter **Exhibit 62**, attached hereto and incorporated herein by reference.

93. Having satisfied themselves that they are in compliance, the debt collection efforts of Sun Loan, Doherty, Brundage and BMC, start up again specifically,

- a. On September 3, 2010, Sun Loan called Plaintiffs at home four times, then at work and on their cell phones;
- b. On September 7, 2010, Sun Loan called Plaintiffs at home four times, then at work and on their cell phones;
- c. On September 8, 2010 Sun Loan called Plaintiffs at home four times, then at work and on their cell phones;
- d. On September 9, 2010 Sun Loan called Plaintiffs at home four times, then at work and on their cell phones.

94. It was not until the filing of this lawsuit that debt collection efforts ceased against the Plaintiffs – that is to say, the calling, writing and 'coming by' ceased. But the Defendants decided to use the courts to collect by filing a counterclaim to this suit on the debt and illegally asked for \$3,000 in attorney fees and contingent amounts if an appeal was filed.

95. Defendants' contractual renewal processes and debt collection efforts amount to illegal loansharking and, as all Defendants are benefiting from such illegal activities and funneling their illegal gains throughout the enterprise, they are all subject to a RICO cause of action.

III. CAUSES OF ACTION

TEXAS COMMON LAW CLAIMS

D. Unreasonable Debt Collection Activities

96. Plaintiffs, repeats, realleges and incorporates by reference ¶1-95.

97. The tort of “unreasonable collection efforts” recognizes the right of consumers to be free from unreasonable and wrongful collection efforts by creditors. The standard of conduct for unreasonable collection efforts is ruled by the negligence doctrine. *Moore v. Savage* (Tex. Civ. App. Waco, 1962) 359 S.W.2d 95 [writ refused n.r.e.] *per curiam* 362 S.W.2d 298 (Tex. 1962). The tort has been defined as: “[collection] efforts such as a person of ordinary care and prudence would not have used under the same or similar circumstances.” In order to recover exemplary damages for a creditor’s unreasonable collection efforts, the debtor must prove malice or reckless disregard for the rights of others. *Ware v. Paxton*, 359 S.W.2d 897, 898–899 (Tex.1962).

98. Defendants’ efforts to collect on this account have been unreasonable as they have engaged in a course of harassment and misinformation and manipulation and they have exhibited a total disregard for the rights of the Plaintiffs and all this was done knowingly and recklessly and was directed to the Plaintiffs with malice.

99. Defendants’ motive was always controlling the customer’s actions in a manner that would result in the Defendants reaping consistently larger profits and indirectly larger bonuses by illegal lending and illegal debt collection methods.

100. Defendants’ behavior has caused Plaintiffs great anxiety and emotional distress in the form of sleeplessness, fear of answering their own telephone, nervousness, fear of answering their own door, embarrassment, depression, feelings of

hopelessness/guilt/worthlessness, restlessness and irritability, headaches, digestive disorders and Defendants actions have caused migraine headaches with the Plaintiffs’.

101. Plaintiffs were injured by the Defendants actions and Plaintiffs request actual damages and exemplary damages in an amount to be determined at trial and cost of litigation and attorney fees.

E. Intrusion Upon Seclusion/Right to Privacy

102. Plaintiffs, repeats, realleges and incorporates by reference ¶1-101.

103. Under Texas law, there exists a common-law right to privacy. *Billings v. Atkinson*, 489 S.W.2d 858, 859 (Tex. 1973); *Farrington v. Sysco Food Services, Inc.*, 865 S.W.2d 247, 253 (Tex. App.--Houston [1st Dist.] 1993, writ denied). There are three elements to consider: (1) an intentional intrusion; (2) upon the seclusion, solitude, or private affairs of another; (3) which would be highly offensive to a reasonable person. *Valenzuela v. Aquino*, 853 S.W.2d 512, 513 (Tex. 1993); *Farrington*, 865 S.W.2d at 253; *Gill v. Snow*, 644 S.W.2d 222, 223-24 (Tex. App.--Fort Worth 1982, no writ); Restatement (Second) of Torts, § 652B (1977). Courts have also required that the intrusion be unreasonable, unjustified, or unwarranted. *Billings*, 489 S.W.2d at 860; *Farrington*, 865 S.W.2d at 253.

104. "No doubt exists that harassing telephone calls are overt, unlawful acts. They are overt, unlawful acts for at least two reasons. First, they are unwarranted invasions of the right of privacy which constitute a legal injury for which a remedy exists. See *Billings v. Atkinson*, 489 S.W.2d 858, 860 (Tex.1973). They constitute an intrusion upon a person's seclusion or solitude and, therefore, invade privacy. See *National Bonding Agency v. Demeson*, 648 S.W.2d 748, 749 (Tex.App.--Dallas 1983, no writ). See

generally W. Page Keeton, Prosser and Keeton on the Law of Torts § 117 (5th ed.1984) (stating, at page 855, that persistent and unwanted telephone calls have been held to be invasions of privacy). Second, they cause the telephone of another to ring repeatedly or are repeated anonymous telephone communications made in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass or offend another in violation of Tex. Penal Code Ann. §42.07(a)(4) (Vernon Supp.1985)." 707 S.W.2d 149, 156-57 (Tex. App.--Dallas 1986, writ ref'd n.r.e.).

105. Defendants placed repeated debt collection telephone calls to the Plaintiffs', at home and on the job and harassed their relatives and neighbors. When the Defendants came to Plaintiffs' home, they acted in such a manner that Plaintiffs felt attacked and therefore she was sometimes afraid to step outside her own house. Defendants were told of Plaintiffs' legal representation and the dispute of this account, the request for verification and the request to cease and deist contact with the Plaintiffs but the Defendants chose to simply ignore these notices. Defendants continued to contact third parties even though they knew where Plaintiffs was located at all times, they knew where Plaintiffs lived, and they knew how to reach Plaintiffs' counsel. The Defendants contacted these third parties and disclosed that Plaintiffs owed them a debt in an effort to embarrass, frustrate and sicken the Plaintiffs and these acts were an intrusion upon Plaintiffs' personal privacy. The Defendants knew that but they chose to continue along in that manner and used these actions as a threat and inducement for Plaintiffs to do their bidding. All of these acts against a couple who simply was struggling to pay off a debt while not understanding that Defendants were continuing to do business in such a manner as to ensure that the debt was never paid off.

106. Defendants actions rise to a level of behavior that would certainly be offensive to 'a reasonable person'. And any reasonable person would feel that these contacts by Defendants were substantial enough to make the recipient feel severely offended, humiliated and/or outraged. As a result of this intrusion and invasion of the Plaintiffs' right to privacy, the Plaintiffs has suffered mental anguish in the form of sleeplessness, fear of answering their own telephone, nervousness, fear of answering their own door, embarrassment, depression, feelings of hopelessness/guilt/worthlessness, restlessness and irritability, migraine headaches, and digestive disorders.

107. Plaintiffs ask the court for actual damages and exemplary damages in an amount to be determined at trial, attorney fees, cost of litigation and requests injunctive relief against Defendants.

F. Fraud

108. Plaintiffs, repeats, realleges and incorporates by reference ¶1-107.

109. The Texas Supreme Court has held that a fraud cause of action requires "a material misrepresentation (or omission of a material fact), which was false, and which was either known to be false when made or was asserted without knowledge of its truth, which was intended to be acted upon, which was relied upon, and which caused injury." *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 47 (Tex. 1998)(quoting *Sears, Roebuck & Co. v. Meadows*, 877 S.W.2d 281, 282 (Tex. 1994)). While a party's intent is determined at the time the party made the representation, it may be inferred from the party's subsequent acts after the representation is made. *Spoljaric v. Percival Tours, Inc.*, 708 S.W.2d 432, 434 (Tex. 1986). Intent is a fact question uniquely within the realm of the trier of fact because it

depends on the credibility of the witnesses and the weight to be given their testimony. *Id.* Because intent to defraud is not susceptible to direct proof, it invariably must be proven by circumstantial evidence. *Id.* at 435. Slight circumstantial evidence of fraud, when considered with the breach of a promise to perform, is sufficient to support a finding of fraudulent intent. *Id.*

110. The Defendants' unwritten policies and procedures and complete lack of a training program is intentional and illegal. Defendants Sun Loan Inc, Dougherty, Brundage, and BMC purposely did not explain to the Sun Loan Alice storefront employees, who handled contracts with the customers, the terms of the contracts that they were forcing the customers to sign. No deposed storefront management/assistant manager/supervisor employee knew what the important contract terms meant nor how the amounts contained in the contract were calculated, most importantly they did not understand the term "installment account handling charge". Thus, no employee would ever be able to explain the contract to a customer, if and when they were asked, as these are the employees who trained the staff based on their on the job knowledge. Instead the storefront employees had been trained to only direct the customers to three terms on the paperwork - "amount of payments" "when the payment was first due" and "account number".

111. All Defendants purposefully hid from the Plaintiffs the exact contract terms, they told the Plaintiffs that it was time to renew their contract when their prior contracts had not expired. Defendants failed to disclose that they were charging the Plaintiffs the same fees on each and every contract and/or that they were having Plaintiffs renew contracts to simply obligate and acquire more fees from the Plaintiffs - all so they could

all get bonuses, even though often they were illegal contracts as the Plaintiffs was never receiving any “cash advance”. The Defendants made collection calls to Plaintiffs for payments when payments were not due, yet another attempt to get the Plaintiffs into the office and strong arm them into signing another renewal contract. The Defendants further requested from the Plaintiffs references of her friends and family in order to qualify them for a loan when the true purpose of obtaining such a list was to utilize that list for harassment in debt collection/contract renewal efforts. The real purpose of Defendants’ debt collection efforts was not to ensure that the terms of the current contract were met, instead they were to ensure that the customers paid enough on the current contract to cover the acquisition charge and the IAHC and then to force them into the next contract. This way Defendants’ would capture the acquisition charge IAHC money over and over again and the customer would never pay down their principal. A ‘death spiral’ for the customer but a ‘cash cow’ for the Defendants.

112. Defendants are liable for fraud. As a result of Defendants’ fraud, Plaintiffs has been harmed. As a result, the Plaintiffs have actual damages, attorney fees and costs and should be awarded exemplary damages as well.

113. Likewise, as this was an ongoing RICO fraudulent enterprise, Plaintiffs is not required to plead with specificity each and every instance of fraud.

G. Civil Conspiracy

114. Plaintiffs, repeats, realleges and incorporates by reference ¶1-113.

115. Civil Conspiracy is a combination by two or more people to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. See *Goldstein*

v. Mortenson, 113 S.W.3d 769, 778 (Tex. App.--Austin 2003, no pet.). A conspiracy requires a preconceived plan and unity of design and purpose. *Id.* "The required elements of a civil conspiracy are (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as a proximate result." *Greenberg Traurig of N.Y., P.C. v. Moody*, 161 S.W.3d 56, 80 (Tex. App.--Houston [14th Dist.] 2004, no pet.). In addition, civil conspiracy requires specific intent to agree to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. *A.H. Belo Corp. v. Corcoran*, 52 S.W.3d 375, 384 (Tex. App.--Houston [1st Dist.] 2001, pet denied) (citing *Juhl v. Airington*, 936 S.W.2d 640, 644 (Tex. 1996)).

116. Defendants all acted in concert and attempted to elude the laws of Texas while dealing with the Plaintiffs and their other customers. The conspirators had a meeting of the minds on this scheme, they established unwritten policies and procedures which exhibit this understanding and they personally trained employees in this scheme. Each Defendant had a specific intent and each agreed to use whatever means were necessary for the sole purpose of enriching themselves by bonuses based on loan renewals. The scheme involved short term loans and using any means necessary to make the consumers renew these loans every 60+ days. Defendants did this in a manner that would not be noticed to the customers through a 'step up' process. At each step up, they throw the consumers a small bone, such as waiving a payment or giving them back a payment, to make them feel they are getting something out of the deal – this is interspersed with times when they give no consideration at all. By the end of this step up process, Defendants will have reached the end of the consumers ability to

repay - what started out as an initial small loan and was increased up to multiples of that initial loan – all this without Defendants actually being out of pocket any more money than the amount of the initial small loan – and all this without any of the customers payments going towards paying down the loan principal. When the customer is finally stepped up enough that he/she can no longer afford the payments, then Defendants kick their into effect their principal collection plan which reaches beyond the realm of consciousness and is unrelenting and illegal.

117. As a result of the Defendants conspiracy, the Plaintiffs was harmed as seeks actual damages, attorney fees and costs and exemplary damages and Defendants should be enjoined from such behavior in the future.

H. Intentional Infliction of Emotional Distress

118. Plaintiffs, repeats, realleges and incorporates by reference ¶1-117.

119. The elements of intentional infliction of emotional distress are: (1) the defendant acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the actions of the defendant caused the Plaintiffs emotional distress; and (4) the emotional distress suffered by the Plaintiffs was severe. *Twyman v. Twyman*, 855 S.W.2d 619, 621 (Tex. 1993). Conduct is not extreme and outrageous for purposes of the tort of intentional infliction of emotional distress unless it is atrocious, beyond all possible bounds of decency, and utterly intolerable in a civilized community. *Id.* Extreme and outrageous conduct does not include mere insults, indignities, threats, annoyances, or petty oppression. *Soto v. El Paso Natural Gas Co.*, 942 S.W.2d 671, 681 (Tex. App.--El Paso 1997, writ denied); *Horton v. Montgomery Ward & Co., Inc.*, 827 S.W.2d 361, 369

(Tex. App.--San Antonio 1992, writ denied) (quoting Restatement (Second) of Torts § 46, Comment d (1965)).

120. It is clear that the Defendants all acted purposefully and intentionally and used outrageous contracting procedures and debt collection efforts in their dealings with the Plaintiffs. Their debt collection efforts were illegal and even resulted in stalking of the Plaintiffs.

121. Moreover, this conduct was extreme and harmful to the Plaintiffs, so much so, that Plaintiffs' suffered sleeplessness, fear of answering their own telephone, nervousness, fear of answering their own door, embarrassment, depression, feelings of hopelessness/guilt/worthlessness, restlessness and irritability, migraine headaches, and digestive disorders.

122. Plaintiffs seek actual damages, attorney fees, costs and exemplary damages for intentional infliction of emotional distress.

TEXAS STATUTORY CLAIMS

I. Texas Finance Code §341-341 *et seq* & Texas Administrative Code

123. Plaintiffs, repeats, realleges and incorporates by reference ¶1-122.

124. Defendant Sun Loan Alice is a lender licensed by the Texas Office of Consumer Credit Commission and is regulated by all of its laws when lending with Texas consumer. Defendant Sun Loan Alice is a 'regulated lender' who is controlled/regulated by the Rules in the Texas Administrative Code ("TAC"), Title 7, Part 5, Chapter 83. No other Defendant is a lender licensed by the Texas Office of Consumer Credit Commission and no other Defendant is authorized to solicit, incite or lend Texas residents monies.

125. Section 83.203 states a “devise, subterfuge, or pretense to evade the application” of this chapter, as used in Texas Finance Code 342.051(b) refers to any transaction: 1) that in form may appear on its face to be something other than a loan, but in substance meets the definition of a loan as defined in Texas Finance Code 301.002(a)(10); and 2) in which more than 10% annual interest, in substance, is being contracted for, charge or received.

126. Alternatively, instead of the maximum amount of interest, under Texas Finance Code 342.252, a lender may charge only the following:

(3) on a cash advance of more than \$100:

(A) an acquisition charge that is not more than \$10; and

(B) an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.”

127. Under Texas Finance Code 341.001(3) "cash advance" means the total of the amount of cash or its equivalent that the borrower receives and the amount that is paid at the borrower's direction or request, on the borrower's behalf, or for the borrower's benefit.

128. Under Sec. 342.257. DEFAULT CHARGE; DEFERMENT OF PAYMENT. On a loan contract in which the cash advance is \$100 or more, instead of additional interest for default under Subchapter E, the contract may provide for a delinquency charge if any part of an installment remains unpaid after the 10th day after the date on which the installment is due. However, the delinquency charge on a loan with a cash advance of \$100 or more may not exceed the greater of \$10 or five cents for each \$1 of the delinquent installment.

129. It is clear that the Plaintiffs were not loaned monies and/or “received a cash advance”, i.e., consideration, on each any every loan that they were forced into entering and that Plaintiffs. Further, the Defendants have reversed payments and reapplied payments late to obtain delinquency fees, in violation of the law. Therefore, the Defendants charged a late charge when they were not deserving of such; have charged the Plaintiffs an usurious rate of contractual interest as they charged the Plaintiffs fees but did not extend any “cash advances” and the total amount of lending fees were in excess of that allowed by law; they have devised a scheme to maximize their profits by renewing loans in such a manner as to play off the IAHC charges against the refund based on the sum of periodic balances.

130. Also, it is clear that Plaintiffs’ contract annual interest rate under the alternative exceeded 18% per year, in violation of the law. In the alternative, Plaintiffs’ total contracting rate of interest exceeds the alternative interest fees that the Defendant could charge resulting in usury. Defendants did this knowingly and with the intent to deceive and harm the Plaintiffs.

131. Interest charged when no interest is due has been a special concern in charging cases. In several cases, Texas courts have found that creditors charged interest during a time period for which no interest was due. Since the interest was by definition greater than twice the lawful amount (*i.e.*, any interest at all is more than two times zero), that act resulted in automatic forfeiture of principal as well as penalties for interest charged. "By describing the conditions precedent to recovery of penalties in the disjunctive, the Legislature made it clear that only one such condition need to occur to trigger penalties; either a contract for, a charge of or a receipt of usurious interest." *Windhorst v. Adcock*

Pipe & Supply, 547 S.W.2d 260, 261 (Tex. 1977). When a usury claim is based upon the creditor's charge of usurious interest, the actionable conduct is that of the creditor acting unilaterally and independently. *Id.* A unilateral act of charging occurs if the creditor enters a usurious amount of interest on a statement of account, *Windhorst*, 547 S.W.2d 260; affidavits and pleadings, *Moore v. Sabine National Bank of Port Arthur*, 527 S.W.2d 209 (Tex. Civ. App. -- Austin 1975, writ ref'd n.r.e.); demand letters, *Dryden v. City National Bank of Laredo*, 666 S.W.2d 213 (Tex. App. -- San Antonio 1984, writ ref'd n.r.e.); or monthly statements, *Wright Way Spraying Service v. Butler*, 690 S.W.2d 897 (Tex. 1985). Whether the debtor actually pays off the loan is immaterial. Payment, of the loan is not necessary to an action based upon charging usurious interest. *Windhorst*, 547 S.W.2d 260; *Missouri-Kan.-Tex. R.R. Co. v. Fiberglass Insulators*, 707 S.W.2d 943 (Tex. App. -- Houston [1st Dist.] 1986, writ ref'd n.r.e.).

132. Any person who violates any Consumer Chapter by contracting for, charging or receiving interest or time-price differential greater than the authorized amount is required to forfeit to the obligor (i) two times the *total* interest, time-price differential and default and deferment charges contracted for, charged or received, plus (ii) attorneys fees. [349.001(a)] Any person who violates any Consumer Chapter by contracting for, charging, or receiving a charge *other than* interest or time-price differential greater than the authorized amount is required to forfeit to the obligor (i) the greater of (A) 3 times the difference between the actual charge and the amount authorized, or (B) \$2,000 or 20% of the principal, whichever is less, plus (ii) reasonable attorney's fees. [349.001(b)]. A person who charges, contracts for or receives interest or time-price differential in excess of twice the lawful amount of interest or time-price differential under any

Consumer Chapter: Forfeits to the obligor all principal, interest or time-price differential and other charges; Pays the obligor's attorneys' fees in enforcing this penalty. [349.002; 349.501]. Moreover, Defendants under Texas common law have forfeited their right to any alleged principal.

133. TAC Rule §83.202 states that each “officer, director, employee and agent of a license must have a working knowledge of Texas Finance Code, Chapter 342, its implementing regulations and other pertinent state and federal statutes and regulations that apply to the licensee’s business”.

134. It is evident that no employees at the Sun Loan Alice store knew Texas Finance Code, Chapter 342, its implementing regulations and other pertinent state and federal statutes and regulations that apply to the storefront’s business.

135. TAC Rule §83.837(b) states upon “discharge of an indebtedness by payment, renewal, or refinancing, a lender must return an original or true and correct copy of the instrument creating the indebtedness marked "PAID" or, in lieu of a marked original or copy, provide a discharge and release of all obligations under the loan to satisfy the requirements of Texas Finance Code, §342.454.....A lender must comply with the requirements of this section within a reasonable time not to exceed 30 days after receipt of collected funds by the lender.”

136. At no time, did Sun Loan ever return an original or true and correct copy to either Anita or Adrian of the instrument creating the indebtedness marked "PAID" or, in lieu of a marked original or copy, provide a discharge and release of all obligations under the loan to satisfy the requirements of Texas Finance Code, §342.

137. TAC Rule §83.852 states that when “making or negotiating a loan under Texas Finance Code, Chapter 342, licensees must consider, in determining the size, duration, and schedule of installments of a loan, the financial ability of the borrower to repay the loan. The lender should evaluate whether the borrower should be reasonably able to repay the loan in cash in the time and means provided in the loan contract and repay all other known obligations concurrently”.

138. It is clear, that upon each forced renewal Sun Loan failed to consider, in determining the size, duration, and schedule of installments of a loan, the financial ability of the borrower to repay the loan in cash in the time and means provided in the loan contract and repay all other known obligations concurrently for both Anita and Adrian. Plaintiffs’ loan contracts spanned a period of approximately six years and fifty eight contracts - yet Sun Loan Alice only required the Plaintiffs’ to fill out one application each during that entire time frame and never requested more than one credit report – a time frame when the principal amounts of the initial loans more than doubled – and the payment amount for Anita increased +250% and the payment amount for Adrian increased +500%. This is further evidenced by the events and times where Sun Loan Alice employees encouraged the Plaintiffs to obtain loans with other lenders just to make their payments to Sun Loans.

139. TAC Rule §83.859(a) states in “attempting to collect money due on a loan or to take possession of any property securing a loan, a licensee or the licensee's agent must not use any means other than appeals to reason or lawful remedies authorized under the laws of this state. The licensee is also bound by the remedies prescribed in any instrument securing the loan”.

140. It is clear that violating the Texas Finance Code 392 when attempting to collect these debts from both Anita and Adrian is a violation of TAC Rule §83.859(a).

141. TAC Rule §83.860 states the following under these subsections: (a) a “licensee or the licensee's agent must have the right to contact any person in order to secure information concerning a borrower, unless any personobjects to any contact by a licensee or the licensee's agent. Upon receipt of the objection, the licensee or agent, must cease and desist from any further deliberate communication with the person objecting relative to the specific borrower and account in question, and (b) a licensee or the licensee's agent “must not solicit the payment of all or any part of any debt subject to Texas Finance Code, Chapter 342 from any person other than the borrower, a co-borrower, endorser, surety, or guarantor of the obligation, borrower's designee, trustee, insurance company paying a claim or a refund involving the debtor, any party having a lawful right or claim to any collateral, any person who may be or is legally obligated to pay all or a portion of the debt, or a guardian, executor, administrator, attorney, agent, or representative of any of the foregoing”, and (c) without the prior written consent of the borrower given directly to the licensee... a licensee may not communicate with a borrower in connection with the collection of a loan at any unusual time or place”, and (d) a licensee may not communicate with a borrower in connection with the collection of a loan at the borrower's place of employment if the licensee has received written notification from the borrower or the borrower's employer to cease communications with the borrower while at the place of employment”, (e) a licensee may not communicate nonpublic personal information pertaining to a debt or obligation unless the person receiving the information is the borrower, the borrower's attorney, a consumer reporting

agency, another creditor, or the attorney of the creditor, a guardian, executor, or administrator, or any party that may lawfully receive the information under the Gramm Leach Bliley Act, 15 U.S.C. §§6801 - 6809, and its implementing regulations, or the Fair Credit Reporting Act, 15 U.S.C. §§1681 - 1681x, and its implementing regulations, or other law or regulation. Unless notified pursuant to subsection (a) of this section, this prohibition does not apply to a licensee seeking information about the location of the borrower.

142. It is evident, that Sun Loan violated each of these sections as referenced in the facts as outlined in ¶1-128. Sun Loans intentionally contacted third parties after they objected and requested no further contact, Sun Loans requested payments for these loans from other third parties, Sun Loans communicated with Plaintiffs' at times and places they knew to be 'unusual times and places' and times and places where Plaintiffs' requested that Sun Loans not contact them, Sun Loans contacted and threatened to contact Plaintiffs at their places and times of employment, even after written notice requesting no contact at their places of employment and even after they were told they would lose their jobs, Sun Loans disclosed that Plaintiffs owed them money to each third party and to other lender references on this Plaintiffs application – all in violation of TAC Rule 83.860.

143. Further, TAC Rule §83.862 states, in part, that it is a violation of this statute to, "in attempting to collect money due on a loan... a licensee or the licensee's agent may not use any fictitious name unless the name used is an established trade name of the licensee".

144. It has become clear that Sun Loan was not a registered fictitious name in this county or with the Secretary of State until after the filing of this lawsuit, yet, Sun Loan used this fictitious name in its business as an established trade name of the licensees, in a manner that was misleading, has created a great deal of confusion in this case and is illegal under this statute.

145. Likewise, any person who violates any Consumer Chapter by failing to perform any duty imposed on that person by the Consumer Chapter, or doing anything prohibited by the Consumer Chapter, is liable to the obligor for a penalty under one of the following provisions: A penalty equal to three times the actual economic loss suffered by the obligor, plus attorneys' fees; or if the violation was material and the obligor was induced to enter the transaction because of the violation, a penalty equal to twice the total of time-price differential and interest, but not more than \$2,000 if the amount financed is \$5,000 or less, and not more than \$4,000 if the amount financed is more than \$5,000, plus attorneys' fees.

J. Violation of Texas Finance Code §392 *et seq*

146. Plaintiffs, repeats, realleges and incorporates by reference ¶1-145.

147. Plaintiffs are “consumer” as defined by 392.001(1), who allegedly owed a “consumer debt” 392.001(2).

148. Defendants Sun Loan Alice, Doherty and BMC are “creditor” and “debt collector” as defined by 392.001(3) and (6) and BMC and Doherty are considered a ‘third party debt collector” (7).

149. Defendants have violated the Texas Finance Code by the following:

A. Defendant Doherty and BMC violated Sec. 392.101, by failing to obtain and hold a bond: “(a) A third-party debt collector or credit bureau may not engage in debt collection unless the third-party debt collector or credit bureau has obtained a surety bond issued by a surety company authorized to do business in this state as prescribed by this section. A copy of the bond must be filed with the secretary of state.”

B. Defendant BMC and Doherty violated Sec. 392.202. (a) When the accuracy of an item in a file that relates to a debt being collected, the debtor may notify, in writing, the third-party debt collector of the inaccuracy. The third-party debt collector shall make a written record of the dispute. If the third-party debt collector does not report information related to the dispute to a credit bureau, the third-party debt collector shall cease collection efforts until an investigation of the dispute described by Subsections (b)-(e) determines the accurate amount of the debt, if any. If the third-party debt collector reports information related to the dispute to a credit bureau, the reporting third-party debt collector shall initiate an investigation of the dispute described by Subsections (b)-(e) and shall cease collection efforts until the investigation determines the accurate amount of the debt, if any. This section does not affect the application of Chapter 20, Business & Commerce Code, to a third-party debt collector subject to that chapter.(b) Not later than the 30th day after the date a notice of inaccuracy is received, a third-party debt collector who initiates an investigation shall send a written statement to the individual: (1) denying the inaccuracy; (2) admitting the inaccuracy; or (3) stating that the third-party debt collector has not had sufficient time to complete an investigation of the inaccuracy. (c) If the third-party debt collector admits that the item is inaccurate under Subsection (b), the third-party debt collector shall: (1) not later than the fifth business day after the date of the admission, correct the item in the relevant file; and (2) immediately cease collection efforts related to the portion of the debt that was found to be inaccurate and on correction of the item send, to each person who has previously received a report from the third-party debt collector containing the inaccurate information,

notice of the inaccuracy and a copy of an accurate report. (d) If the third-party debt collector states that there has not been sufficient time to complete an investigation, the third-party debt collector shall immediately: (1) change the item in the relevant file as requested by the individual; (2) send to each person who previously received the report containing the information a notice that is equivalent to a notice under Subsection (c) and a copy of the changed report; and (3) cease collection efforts. (e) On completion by the third-party debt collector of the investigation, the third-party debt collector shall inform the individual of the determination of whether the item is accurate or inaccurate. If the third-party debt collector determines that the information was accurate, the third-party debt collector may again report that information and resume collection efforts.

C. All Defendants violated Sec. 392.301. (a) In debt collection, a debt collector may not use threats, coercion, or attempts to coerce that employ any of the following practices:

- (3) representing or threatening to represent to any person other than the consumer that a consumer is willfully refusing to pay a nondisputed consumer debt when the debt is in dispute and the consumer has notified in writing the debt collector of the dispute;
- (8) threatening to take an action prohibited by law.

D. All Defendants violated Sec. 392.302: In debt collection, a debt collector may not oppress, harass, or abuse a person by:

- (1) using language intended to abuse unreasonably the hearer or reader;
- (3) causing a person to incur a long distance telephone toll, telegram fee, or other charge by a medium of communication without first disclosing the name of the person making the communication; or
- (4) causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

E. All Defendants violated Sec. 392.303: (a) In debt collection, a debt collector may not use unfair or unconscionable means that employ the following practices:

(2) collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer.

F. All Defendants violated Sec. 392.304: (a) Except as otherwise provided by this section, in debt collection or obtaining information concerning a consumer, a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the following practices:

(1) using a name other than the:(A) true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection;

(5) in the case of a third-party debt collector, failing to disclose, except in a formal pleading made in connection with a legal action: (A) that the communication is an attempt to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the third-party debt collector and the debtor; or (B) that the communication is from a debt collector, if the communication is a subsequent written or oral communication between the third-party debt collector and the debtor;

(8) misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding;

(12) representing that a consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other

charges if a written contract or statute does not authorize the additional fees or charges;

(18) representing that a consumer debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person who is owed the debt;

(19) using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.

150. Plaintiffs seek under Sec. 392.403. (1) injunctive relief to prevent or restrain a violation of this chapter; and (2) actual damages sustained as a result of a violation of this chapter attorney fees and costs and statutory damages under this section for violation of Section 392.101, 392.202, or 392.301(a)(3) of not less than \$100 for each violation of this chapter.

L. DECEPTIVE TRADE TIE IN STATUTE 17.50(h)

151. Plaintiffs, repeats, realleges and incorporates by reference ¶II-C, ¶1-150.

152. Under Texas Finance Code Sec. 392.404. REMEDIES UNDER OTHER LAW.

(a) A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

153. Under 17.50(h) the tie in statute, it states as follows: “(h) Notwithstanding any other provision of this subchapter, if a claimant is granted the right to bring a cause of action under this subchapter by another law, the claimant is not limited to recovery of economic damages only, but may recover any actual damages incurred by the claimant, without regard to whether the conduct of the defendant was committed intentionally. For the purpose of the recovery of damages for a cause of action described by this subsection only, a reference in this subchapter to economic damages means actual damages. In applying Subsection (b)(1) to an award of damages under this subsection,

the trier of fact is authorized to award a total of not more than three times actual damages, in accordance with that subsection.”

154. Wherefore, Plaintiffs seeks treble damages for Defendants violations under the Texas Finance Code.

M. RICO CLAIMS

155. Plaintiffs, repeats, realleges and incorporates by reference ¶II-C, ¶1-154.

156. The specific goal of RICO is to punish the use of an enterprise to engage in certain criminal activities. A person who uses an enterprise to engage in a pattern of racketeering may be convicted under the RICO criminal statute, 18 U.S.C.A. § 1963. An enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." A pattern is defined as "at least two acts of racketeering activity, one of which occurred after the effective date of RICO's passage and the last of which occurred within 10 years ... after commission of a prior act of racketeering activity."

157. The Plaintiffs are ‘persons’⁹ that have been injured by violations of Section 1962.

158. The Defendants are “persons” and Defendants (as illustrated below) are an ‘enterprise’¹⁰ as defined by 18 USC 1961(4).

159. In general, the Plaintiffs allege (1) the existence of an enterprise affecting interstate commerce 2) that the Defendants, Sun Loan Inc, Sun Loan Alice, BMC, Brundage and Doherty, were employed by or associated with this enterprise 3) that the

⁹ Section 1961(3) defines a ‘person’ to include any individual or entity capable of holding a legal or beneficial interest in property.

¹⁰ Section 1961(4) provides that an ‘enterprise’ “include any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity”. An association in fact enterprise will have 1) a common r shared purpose that animates those associated 2) an ongoing organization functioning as a continuing unit 3) an ascertainable structure wherein both the structure and the personnel of any enterprise may undergo alteration without loss of the enterprise’s identity as an enterprise.

Defendants, Sun Loan Inc, Sun Loan Alice, BMC, Brundage and Doherty, participated, either directly or indirectly, in the conduct or affairs of the enterprise, and 4) that the Defendants, Sun Loan Inc, Sun Loan Alice, BMC, Brundage and Doherty, participated through a pattern of racketeering activity that includes at least two racketeering acts. Section 1962 (c). Plaintiff further alleges that it was unlawful for these Defendants to conspire to violate any provisions of 1962(a), 1962(b), 1962(c), or 1962(d).

3. Defendants, Sun Loan Inc, BMC, Brundage and Doherty are owners and/or officers/General Partners or employees within the enterprise who devised, enforced, and rewarded the illegal and unethical unwritten policies and procedures of the employees who dealt directly with the Plaintiffs. Defendants BMC and Sun Loan Alice are the entities which employed persons or entities who used the tactics/policies/procedures to make loans and prepare loan documents and debt collect on those loans in such a manner as to create the illusion that their dealings with the storefront customers was valid and in compliance with Texas law and approved by the Texas Office of Consumer Credit Commissioner. BMC, who states that they are a completely separate entity from the storefronts, mandatorily provides for the storefronts and other Sun Loan Inc interests: executive level management decisions, human resources, employee recruitment and training, advertising, accounting, licensing and auditing functions, information technology, representation on state and national boards and governing bodies, and long-term strategic planning. Supervisors and Regional Managers that are employees of BMC handle daily management decisions for Sun Loans. BMC, without any input from or prior knowledge of the storefront employees, strategically sends written solicitations to storefront customers to come back into the storefronts and renew their loans.

Additionally, BMC, without any input from or prior knowledge of the storefront employees, strategically sends out third party debt collection letters to the storefront customers.

160. Once the customer enters into the first Sun Loan loan, Defendants engage in a practice of force and coercion to get customers, such as the Plaintiffs, to renew their loans every 60+ days. The purpose to “getting the customers to renew a loan” results in a much higher than disclosed annual percentage interest rate fees for Defendants, which is never purposely disclosed to the Plaintiffs or other customers and results in huge bonuses to the Defendants. Defendants utilize the US Mail¹¹ to both advertise and solicit renewals and debt collect.

161. Defendants ensure that these renewals occur by suggesting and deceiving customers into believing the loan needs to be renewed even when payments are not due and even though the current loan term was not complete. They start calling the customer when the payment is only one day past due – and will continue, harassing and embarrassing the customer until the payment is made – thus instilling in the customer that if one does not do everything they are told that this harassment and embarrassment can get even worse. They use a process of stepping up the principal on the loan until the customer is in ‘too deep’ and is struggling to make the payments, at which time it becomes easier for Defendants to get the customer to renew the loan.

162. Further, Defendants ensure that their customers are not made aware that by executing these new contracts, i.e., renewal contracts, that they were agreeing, each and every time, to new additional “acquisition fees” and “installment account handling fees” -

¹¹ Section 18 USC 1341 defines mail fraud. Unlike common law fraud, it is not necessary that the mailing itself contain a misrepresentation. *United States v. McNeive*, 536 F.2d 1245, 1249 (8th Cir 1976)

instead they deceive these individuals into believing that they are just carrying forward the prior charge, not charging them additional charges.

163. Additionally, their customers are not informed that, even though the customer has made timely payments, that none of that money has been applied toward the loan principal. Defendants further secure that this scheme is successful by failing to train and/or inform store management and/or employees in the law as is required under the Texas Administrative Code. This makes it impossible for management and/or employees to explain such charges on the contract to Defendant's customers and/or to properly explain such fees and charges.

164. Additionally, Defendants are sometimes performing these contract renewal acts even though customers, like the Plaintiffs, are not receiving any consideration for entering into the loan. The contracts are generated by computer software rather than Defendant Sun Loan's managers and employees – all the terms that appear on the contract are not 'controlled' by the TILA - the fields in the 'Amount Financed Itemization' are not controlled by TILA and the field 'Cash Proceeds' is not a 'true' indicator that the Plaintiffs received those proceeds. On occasion, the contracts state that monies were advanced when no monies are actually given to the customer, including the Plaintiffs. Hence, we have no definitions on the contract itself and we have storefront employees oblivious as to the meaning of the main terms, including: 'Previous Balance', 'Refund', 'Additional Refund', 'Maturity Interest', 'Cash Proceeds', 'Payment to Lender'

165. Furthermore, the Defendants developed collection policies and procedures and implemented such policies and procedures against the Plaintiffs and other customers that

are in violation of the Texas Administrative Code and the Texas Finance Code as well as the Texas common law.

166. In short, this fraud/scheme was a simple way for the Defendants to charge the Plaintiffs fees/interest rates called “loan acquisition fees” and “installment handling charge” in excess of what is allowed by Texas law making this contract renewal scheme usurious.

167. Defendants’ illegal contracting and debt collection scheme utilizes both wire services and the US mails. Specifically, the Defendants:

a. On March 8, 2006, June 2, 2006, August 14, 2006, October 20, 2006. February 8, 2007, February 17, 2007, April 30, 2007, March 25, 2008, November 2, 2009, December 2, 2009, January 21, 2010 and April 15, 2010 BMC corporate office sent fraudulent advertisements/solicitations to Anita, via US mails.

b. On September 2, 2008, December 26, 2008, January 26, 2009, April 3, 2009, September 21, 2009 and March 27, 2010, BMC mailed illegal debt collection letters to Anita via US Mails.

c. On March 25, 2005, October 7, 2005, November 7, 2005, May 19, 2006, September 12, 2006, February 8, 2007, February 15, 2007, February 2, 2008, March 3, 2008, April 3, 2008, November 29, 2008, October 28, 2009, November 27, 2009, December 28, 2010, January 26, 2010, March 27, 2010 and April 15, 2010, BMC sent fraudulent advertisements/solicitations to Adrian, via US mails.

d. On March 21, 2009, June 22, 2009, July 30, 2009, March 15, 2010 and March 27, 2010 BMC corporate office and Sun Loan mailed illegal debt collection letters to Adrian via US Mails.

168. As such, the Defendants have engaged in activity that constituted racketeering activity as defined by 18 USC 1961(1). Specifically, the Defendants:

- a. Made extortionate¹² extensions of credit to the Plaintiffs in violation of 18 USC 892 by making loans to the Plaintiffs that were not enforceable in Texas.
- b. Participated in or conspired to participate in the use of extortionate and illegal means to collect or attempt to collect from the Plaintiffs in violation of 18 USC 894 by making threats that were unlawful and impossible under state law.
- c. Utilized the US Mail to further their activities.

169. The Defendants began engaging in fraudulent activity with the Plaintiffs as early as the first “contract” dated June 2004. The other specific fraudulent conduct has been explained in the fact Section C ¶ 1-128, incorporated herein by reference. This racketeering activity continued with the Plaintiffs up through the filing of this lawsuit and subsequent thereto, with the Defendants filing of their Counterclaim.

170. The enterprise has received income derived, directly and/or indirectly, from a pattern of racketeering activity and/or through unlawful debts in which the members have participated as principals within the meaning of 18 USC §2 and the members have used or invested, directly or indirectly, a part of that income or the proceeds of that income, in the establishment and/or operation of an enterprise which is engaged in interstate commerce. In particular, the members have taken income derived from the activities of the Sun Loan

¹² Extortion is defined by the Hobbs Act, in 18 U.S.C. § 1951(b)(2). “The term “extortion” means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” 18 U.S.C. § 1951(b)(2). The Hobbs Act punishes both extortion and attempted extortion: “[w]hoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion *or attempts or conspires to do so* . . . shall be fined under this title or imprisoned not more than twenty years, or both.” 18 U.S.C. § 1951(a) (emphasis added). See *United States v. Middlemiss*, 217 F.3d 112, 118 (2d Cir. 2000)(when extortion is accomplished by force or fear, the victim’s state of mind is an essential element of a violation of 18 U.S.C. § 1951.). See also *United States v. Zemek*, 634 F.2d 1159, 1174 (9th Cir. 1980) (“Threatened force may encompass fear of economic loss as well as physical violence.”).

storefronts and have used or invested part of the income in the operations of Sun Loan in interstate commerce. This constitutes a violation of 18 USC §1962(a).

171. The members have participated, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity and/or collection of an unlawful debt in violation of 18 USC §1962(c).

172. The members, who are persons employed by or associated with the enterprise, have conspired to violate subsections (a) and (c) of section §1962 of Title USC, in violation of 18 USC §1962(d). In particular, the members agreed to charge exceedingly usurious interest rates and agreed to collect these unlawful debts through extortionate practices.

173. Defendants have engaged in illegal lending, extortionate collection practices and racketeering activity causing immediate, irreparable damages to the Plaintiffs and other consumers. This Court should, after notice and hearing, issue a preliminary injunction, and should, after a final trial on the merits, enter a permanent injunction against the Defendants and its officers and owners from any such further illegal lending and collection activity.

174. The Defendants are liable to the Plaintiffs for an amount equal to three times the damages sustained and the costs of the suit including reasonable attorney fees. In addition, the Plaintiffs seeks the issuance of appropriate order, including but not limited to dissolving the enterprise, liquidating the assets of Sun Loan Inc, BMC, and the storefront operations and disbursing the liquidated assets to the Plaintiffs in compensation of the damages that may be awarded.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray this Court:

175. Declare the Defendants' actions are: Unreasonable Debt Collection Efforts; an Invasion of Plaintiffs Right to Privacy/Seclusion; a Fraud; a Civil Conspiracy; an Intentional Infliction of Emotion Distress. Additionally, declare that the Defendant's actions are in violation of: the Texas Finance Code; The Texas Administrative Code, the Texas Deceptive Trade Practices Act; and the RICO act; and

1. Enjoin the Defendants' actions; and
2. Enter judgment for Plaintiffs against the Defendants for actual damages, statutory damages, costs, attorney fees as provided herein; and
3. Enter a judgment for enhanced damages according to each Code section; and
4. Enter a judgment for exemplary damages; and
5. Grant such other further relief as is deemed just.

Dated: February 21, 2013.

/Kimberly Soard
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent to Defendant's counsel, on this the 21st day of February 2012, via US certified mail or other legal means.

s/Kimberly Soard
Kimberly Soard